

# **EXHIBIT 1**



**Service of Process  
Transmittal**  
04/30/2012  
CT Log Number 520425896

**TO:** Enterprise Litigation  
United Services Automobile Association  
9800 Fredericksburg Road, E-3-E  
San Antonio, TX 78288-5038

**RE:** **Process Served in Washington**

**FOR:** USAA Casualty Insurance Company (Domestic State: TX)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Tara Cote, etc., Pltf. vs. United Service Automobile Association, etc., et al.  
including USAA Casualty Insurance Company, Dfts.

**DOCUMENT(S) SERVED:** Certificate of Service, Order, Summons, Class Action Complaint

**COURT/AGENCY:** King County - Kent - Superior Court, WA  
Case # 122126372KNT

**NATURE OF ACTION:** Insurance Litigation - Complaint for Declaratory Judgment, Violation of RCW 19.86,  
Unjust Enrichment and Breach of Contract Claim pertaining to systematic practice  
of unfairly depriving its injured insureds of their full PIP medical benefits by denying  
coverage retroactively and/or by suspending medical payments until after  
completion of an "independent" medical exam or a records review or a peer review -  
Seeking Jury Demand

**ON WHOM PROCESS WAS SERVED:** CT Corporation System, Olympia, WA

**DATE AND HOUR OF SERVICE:** By Certified Mail on 04/30/2012 postmarked on 04/27/2012

**JURISDICTION SERVED :** Washington

**APPEARANCE OR ANSWER DUE:** Within 20 days after service, excluding the day of service - Response to Complaint  
(See document for additional deadlines)

**ATTORNEY(S) / SENDER(S):** Robert B. Kornfeld  
Kornfeld, Trudell, Bowen & Lingenbrink Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, WA 98033  
(425) 893-8989

**REMARKS:** Process served/received by Insurance Commissioner on April 25, 2012 and mailed to  
CT Corporation System on April 27, 2012

**ACTION ITEMS:** CT has retained the current log, Retain Date: 04/30/2012, Expected Purge Date:  
05/05/2012  
Image/SOP  
Email Notification, Enterprise Litigation Linda.Allen@usaa.com

**SIGNED:** CT Corporation System  
**PER:** Michele Rowe  
**ADDRESS:** 1801 West Bay Drive NW  
Suite 206  
Olympia, WA 98502  
**TELEPHONE:** 360-357-6794

Page 1 of 1 / TO

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

TARA COTE, individually and on behalf of the class of similarly situated persons and entities,	)	
	)	NO. 12-2-12637-2 KNT
Plaintiffs,	)	<u>INSURANCE COMMISSIONER'S</u>
vs.	)	<u>CERTIFICATE OF SERVICE</u>
UNITED SERVICE AUTOMOBILE	)	
ASSOCIATION, a foreign corporation, USAA	)	
GENERAL AGENCY, INC., a foreign	)	
corporation, USAA INSURANCE AGENCY, a	)	
foreign corporation, USAA CASUALTY	)	
INSURANCE COMPANY, a foreign	)	
corporation, USAA GENERAL INDEMNITY	)	
COMPANY, a foreign corporation,	)	
Defendants.	)	

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**THIS IS TO CERTIFY** that the Insurance Commissioner of the State of Washington has accepted service of

***SUMMONS; COMPLAINT; ORDER SETTING CASE SCHEDULE***

in the above-mentioned matter on April 25, 2012, on behalf of and as statutory attorney for

***USAA CASUALTY INSURANCE COMPANY***

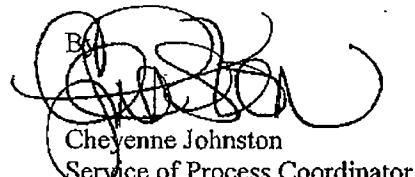
an authorized foreign or alien insurer, and has forwarded a duplicate copy thereof to said insurance company pursuant to RCW 48.02.200 and 48.05.200.

Receipt of the \$10 statutory service fee is acknowledged.

**ISSUED AT OLYMPIA, WASHINGTON: April 26, 2012**

Certification No.: 91 7199 9991 7030 0873 4617

**MIKE KREIDLER**  
Insurance Commissioner



Handwritten signature of Mike Kreidler, which appears to be a stylized 'MK' followed by a cursive signature.

Cheyenne Johnston  
Service of Process Coordinator

**Original to:**

Robert B. Kornfield  
Kornfield Trudell Bowen & Lingenbrink, PLLC  
3724 Lake Washington Blvd NE  
Kirkland, WA 98033

**Copy to:**

USAA Casualty Insurance Company  
CT Corporation System  
1801 West Bay Drive NW, Suite 206  
Olympia, WA 98502

Tracker ID 8488



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

TARA COTE

vs

USAA

Plaintiff(s)

Defendant(s)

NO. 12-2-12637-2	KNT
Order Setting Civil Case Schedule (*ORSCS)	
ASSIGNED JUDGE Gain	14
FILE DATE:	04/12/2012
TRIAL DATE:	09/09/2013

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

**I. NOTICES**

**NOTICE TO PLAINTIFF:** The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the **Schedule** on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

*"I understand that I am required to give a copy of these documents to all parties in this case."*

Print Name

Sign Name

## I. NOTICES (continued)

### NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] -- especially those referred to in this *Schedule*. In order to comply with the *Schedule*, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLCR 26], and for meeting the discovery cutoff date [See KCLCR 37(g)].

### CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$230 must be paid when any answer that includes additional claims is filed in an existing case.

### KCLCR 4.2(a)(2)

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

### PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

### NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

*All parties to this action must keep the court informed of their addresses.* When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

### ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule if the case is subject to mandatory arbitration and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. Any party filing a Statement must pay a \$220 arbitration fee. If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

### NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

King County Local Rules are available for viewing at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).

## II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Thu 04/12/2012	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. <b>\$220 arbitration fee must be paid</b>	Thu 09/20/2012	*
DEADLINE to file Confirmation of Joinder if not subject to Arbitration. [See KCLCR 4.2(a) and Notices on Page 2].	Thu 09/20/2012	*
DEADLINE for Hearing Motions to Change Case Assignment Area. [See KCLCR 82(e)].	Thu 10/04/2012	
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLCR 26(b)].	Mon 04/08/2013	
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLCR 26(b)].	Mon 05/20/2013	
DEADLINE for Jury Demand [See KCLCR 38(b)(2)].	Mon 06/03/2013	*
DEADLINE for Setting Motion for a Change in Trial Date [See KCLCR 40(e)(2)].	Mon 06/03/2013	*
DEADLINE for Discovery Cutoff [See KCLCR 37(g)].	Mon 07/22/2013	
DEADLINE for Engaging in Alternative Dispute Resolution [See KCLCR 16(b)].	Mon 08/12/2013	
DEADLINE for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLCR 4(j)].	Mon 08/19/2013	
DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16(a)(2)].	Mon 08/19/2013	*
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56; CR 56].	Mon 08/26/2013	
Joint Statement of Evidence [See KCLCR (4)(K)].	Tue 09/03/2013	*
DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file Proposed Findings of Fact and Conclusions of Law with the Clerk)	Tue 09/03/2013	*
Trial Date [See KCLCR 40].	Mon 09/09/2013	

## III. ORDER

Pursuant to King County Local Civil Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Civil Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this Order Setting Civil Case Schedule and attachment on all other parties.

DATED: 04/12/2012


PRESIDING JUDGE

#### **IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE**

##### **READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE**

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

**COMPLEX LITIGATION:** If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

**APPLICABLE RULES:** Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

##### **CASE SCHEDULE AND REQUIREMENTS**

Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

##### **THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.**

###### **A. Joint Confirmation regarding Trial Readiness Report:**

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment, etc.).

The form is available at <http://www.kingcounty.gov/courts/superiorcourt.aspx>. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding said report.

###### **B. Settlement/Mediation/ADR**

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.

**C. Trial:** Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website <http://www.kingcounty.gov/courts/superiorcourt.aspx> to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

#### **MOTIONS PROCEDURES**

##### **A. Noting of Motions**

**Dispositive Motions:** All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Nondispositive Motions:** These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Motions in Family Law Cases not involving children:** Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Emergency Motions:** Under the court's local civil rules, emergency motions will be allowed only upon entry of an Order Shortening Time. However, emergency discovery disputes may be addressed by telephone call and without written motion, if the judge approves.

#### **B. Original Documents/Working Copies/ Filing of Documents**

**All original documents must be filed with the Clerk's Office.** Please see information on the Clerk's Office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding the new requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. On June 1, 2009 you will be able to submit working copies through the Clerk's office E-Filing application at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).

**Service of documents.** E-filed documents may be electronically served on parties who opt in to E-Service within the E-Filing application. The filer must still serve any others who are entitled to service but who have not opted in. E-Service generates a record of service document that can be e-filed. Please see information on the Clerk's office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding E-Service.

**Original Proposed Order:** Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. Do not file the original of the proposed order with the Clerk of the Court. Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order.

**Presentation of Orders:** All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. If final order and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.

**C. Form**

Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

**IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.**



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PRESIDING JUDGE

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

TARA COTE, individually and on behalf of the class of similarly situated persons and entities,

Plaintiffs,

vs.

Cause No.: 12-2-12637-2 KNT

## SUMMONS

6 UNITED SERVICE AUTOMOBILE  
7 ASSOCIATION, a foreign corporation, USAA  
8 GENERAL AGENCY, INC., a foreign  
9 corporation, USAA INSURANCE AGENCY, a  
foreign corporation, USAA CASUALTY  
10 INSURANCE COMPANY, a foreign  
corporation, USAA GENERAL INDEMNITY  
COMPANY, a foreign corporation,

Defendants.

**TO THE DEFENDANTS:**

A lawsuit has been started against you in the above-entitled court by plaintiff.

15 Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this  
16 summons.

17 In order to defend against this lawsuit, you must respond to the complaint by stating  
18 your defense in writing, and by serving a copy upon the person signing this summons within  
19 twenty (20) days after service of this summons, excluding the day of service, or

22 | SUMMONS - 1

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 within sixty (60) days of service if made upon you outside the State of Washington, or a default  
2 judgment may be entered against you without notice. A default judgment is one where plaintiff  
3 is entitled to what he asks for because you have not responded. If you serve a notice of  
4 appearance on the undersigned person, you are entitled to notice before a default judgment may  
5 be entered.

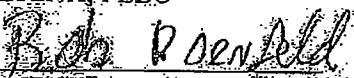
6 You may demand that the plaintiff file this lawsuit with the court. If you do so, the  
7 demand must be in writing and must be served upon the person signing this summons. Within  
8 fourteen (14) days after you serve the demand, the plaintiff must file this lawsuit with the court,  
9 or the service on you of this summons and complaint will be void.

10  
11 If you wish to seek advice of an attorney in this matter, you should do so promptly so  
12 that your written response, if any, may be served on time.

13 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the  
14 State of Washington.

15 Dated: April 11, 2012

16  
17 KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK, PLLC

18 By: 

19 Robert B. Kornfeld, WSBA #10659  
3724 Lake Washington Blvd NE  
20 Kirkland, Washington 98033  
21 (425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

18 HOUCK LAW FIRM, P.S.

By: 

William Houck, WSBA #13324  
4045 262<sup>nd</sup> AVE. SE  
Issaquah, WA 98029  
(425) 392-7118 ax (425) 337-0916  
[houcklaw@gmail.com](mailto:houcklaw@gmail.com)

22  
23  
24  
25  
26 SUMMONS - 2

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

TARA COTE, individually and on behalf of the class of similarly situated persons and entities,

Cause No.: 12-2-12637-2 KNT

Plaintiffs,  
vs.

## CLASS ACTION

UNITED SERVICE AUTOMOBILE  
ASSOCIATION, a foreign corporation, USAA  
GENERAL AGENCY, INC., a foreign  
corporation, USAA INSURANCE AGENCY, a  
foreign corporation, USAA CASUALTY  
INSURANCE COMPANY, a foreign  
corporation, USAA GENERAL INDEMNITY  
COMPANY, a foreign corporation,

**COMPLAINT FOR DECLARATORY  
JUDGMENT, VIOLATION OF RCW §§  
19.86, UNJUST ENRICHMENT and  
BREACH OF CONTRACT CLAIM**

**DEMAND FOR JURY TRIAL**

Defendants.

Plaintiff, Tara Cote, [hereinafter, "Cote" or "Plaintiff"] individually and on behalf of all members of the Class of similarly situated Washington insureds alleges the following Complaint and causes of action against Defendants United Services Automobile Association, USAA General Agency, Inc., USAA Insurance Agency, USAA Casualty Insurance Company, and USAA General Indemnity Company (hereinafter " "):

## **CLASS ACTION COMPLAINT - 1**

**KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK** Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

## I. PRELIMINARY STATEMENT

**A. Defendant USAA Provides PIP/MED PAY Coverage in Washington**

3       1.1     At all time relevant, each of the Defendant USAA insurance companies has sold  
4 automobile insurance in Washington. USAA, as an automobile insurers in Washington, is  
5 required by law to provide "Personal Injury Protection" or "PIP" and/or MED PAY coverage  
6 in their automobile insurance policies that would pay each insured's "reasonable and necessary"  
7 medical and hospital benefits" up to \$10,000 arising from a covered automobile accident

8        1.2      Defendant USAA engages in a systematic practice of unfairly depriving its  
9      injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by  
10     suspending medical payments until after completion of an “independent” medical exam (IME)  
11     or a records review or a peer review. These “retroactive denials” of coverage occur days,  
12     weeks or months after the claimants have received treatment for their injuries and amount to  
13     a failure to pay claims that have already occurred. The “suspensions of medical payments”  
14     unfairly deny and suspend medical coverage until the completion of the IME or some other  
15     review. These unfair practices can spell financial ruin for insureds, who are receiving necessary  
16     care for their injuries but are unable to reasonably rely upon their PIP insurance coverage to  
17     pay for their treatment, and can cause a loss of health care which can make their injuries and  
18     conditions worse, thereby, increasing pain and suffering. Neither the contract of insurance nor  
19     USAA’s claims department give notice to the insureds that USAA routinely denies coverage  
20     retroactively or suspends coverage for day, weeks or months on end.

21        1.3      With respect to “retroactive denial of coverage”, USAA fails to maintain a  
22 consistent, timely, and fair process for pre-treatment authorization or for contemporaneous  
23 authorization, nor does it give notice of this practice, a practice which is in bad faith and denial  
24 of PIP and MED PAY benefits. Instead, days, weeks or months after treatment has taken place,  
25 USAA unilaterally, without foundation or medical evidence, denies further and past care and

**CLASS ACTION COMPLAINT - 2**

**KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK** Robert B. Kornfeld, Inc., P.S.  
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(425) 893-8989 Fax (425) 893-8712  
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1 treatment. USAA utilizes "independent" medical examiners or other reviews by health care  
2 providers, who may or may not be qualified, to conduct a medical review of the insured. These  
3 examiners are paid exclusively by USAA to make a determination as to whether that treatment  
4 was "reasonable and necessary" or caused by the collision at issue. When coverage is denied,  
5 the denial is retroactive such that the insured party is neither notified nor aware that the  
6 treatment will not be covered until long after treatment has actually occurred. With respect to  
7 "suspension of coverage", USAA denies and suspends coverage before there is a determination  
8 that the treatments are not reasonable and necessary or there is a causation issue.

9       1.4     At all times relevant, USAA's automobile insurance policies in Washington  
10 have not stated that payment of medical and hospital benefits under the PIP and MED PAY  
11 coverage is subject to retroactive denial of coverage or suspension pending an "independent"  
12 medical examination, records review or peer review (hereafter referred to collectively as an  
13 IME) or that this can be accomplished on the whim of an insurance adjuster without any  
14 medical evidence and without the proper foundation and authority to support such a unilateral  
15 decision.

16       1.5     USAA is obligated contractually and under Washington Insurance law to  
17 process PIP claims in a fair and timely manner and to comply with the WAC governing  
18 Insurance Practices. USAA is required to rely on the facts as they appear at the time the  
19 treatment is given as opposed to the opinions of its potentially biased medical  
20 examiners days, weeks or months after the date of treatment.

21       1.6     USAA is prohibited from retroactively denying coverage and/or  
22 unilaterally deciding to suspend payments until an examination can take place.

23       1.7     USAA wrongful conduct violates the Washington State Insurance Code  
24 and the Washington State Consumer Protection Act, and violates USAA's statutory and  
25 contractual duties of good faith and fair dealing and duty to handle claims in a fair and  
26

**CLASS ACTION COMPLAINT - 3**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
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1 reasonable manner. USAA has been "guilty" of bad faith in the payment of MED PAY  
2 and PIP benefits in these regards.

3       1.8     USAA's conduct violated its fiduciary duties to its insureds: (1) the duty  
4 to conduct a reasonable investigation before denying or suspending coverage (2) the  
5 duty to disclose all facts that would aid its insureds in protecting their interests;  
6 (3) the duty of equal consideration; (4) the duty not to mislead its insureds and the  
7 duty to follow the Washington State Insurance regulations.

8        1.9 Plaintiff, on behalf of himself and others similarly situated, seeks damages for  
9 USAA's illegal practices and seeks declaratory and injunctive relief compelling USAA to  
10 adopt fair and equitable claims-handling procedures regarding the issues raised in this action.

## 11 C. The "USAA Group of Insurance Companies" Acts for USAA

12        1.10 At all times relevant, the Defendant USAA companies have processed,  
13 reviewed, adjust and/or paid Washington insured's PIP and MED PAY coverage using the  
14 name, "The USAA Group of Insurance Companies." The name "The USAA Group of  
15 Insurance Companies" has referred to all of the Defendant USAA insurance companies over  
16 the relevant time period.

17 1.11 At all times relevant, the Defendant USAA companies have communicated to  
18 Washington insureds what actions they have taken on bills submitted by them for medical  
19 expenses under the PIP and MED APY coverage through EOB forms that bear the name "The  
20 USAA Group of Insurance Companies".

## II. PARTIES

22        2.1      Tara Cote is a USAA insured who had his PIP benefits retroactively denied and  
23 suspended pending USAA's peer medical records review. She is a resident of King County,  
24 state of Washington.

25

26

**CLASS ACTION COMPLAINT - 4**

**KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK** Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       2.2    Each of the Defendant USAA insurance companies is believed to be foreign  
2 insurance company, licensed to do and conducting business in the State of Washington and  
3 King County.

4           A.    The Defendants have Acted in Concert through a Joint Enterprise

5       2.3    At all times relevant, the Defendant USAA insurance companies have acted in  
6 concert as part of a "joint enterprise" with regard to the processing, review, adjustment and  
7 payment of PIP claims Washington.

8       2.4    As part of this joint enterprise, all the Defendant USAA insurance companies  
9 have processed, reviewed, adjusted and paid Washington insureds' PIP health care bills under  
10 the name "The USAA Group of Insurance Companies."

11      2.5    The USAA Group of Insurance Companies has used the same claims  
12 representatives to process, review, adjust and pay PIP health care charges submitted on all  
13 insurance policies issued by all of the Defendant USAA companies.

14      2.6    The claims representatives have followed the same procedures and practices  
15 when processing, reviewing, adjusting and paying insureds' PIP bills for services irrespective  
16 of which of the Defendant USAA companies was the insurer.

17      2.7    There is no difference between the Defendant companies in the way they  
18 process, review, adjust and pay claims under their insured's PIP coverage. They all use the  
19 same practices and procedures and the same claims representatives.

20      2.8    When processing, reviewing, adjusting and paying insured's health provider  
21 bills, the claims representatives were supervised by the same individuals and were subject to  
22 the same control over their work irrespective of which of the Defendant USAA companies was  
23 the insurer.

24      2.9    The policy language relied upon by the claims representative to pay Washington  
25 providers for their services under the insured's PIP coverage was identical or substantially  
26

CLASS ACTION COMPLAINT - 5

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

similar irrespective of which of the Defendant USAA companies was the insurer. At all times relevant, each of the Defendant USAA companies have used substantially similar if not identical policy language for the PIP provision in their insurance policy relied upon by their claims representatives to pay Washington providers.

5 2.10 One purpose and intent of the joint enterprise between the Defendant USAA  
6 insurance companies was to reduce payments made in Washington for PIP medical expenses.

7 2.11 One purpose and intent of the joint enterprise between the Defendant USAA  
8 insurance companies was to reduce the cost of administrating and paying PIP claims.

9        2.12 The overall purpose and intent of the joint enterprise was to save the Defendant  
10 USAA insurance company costs and expenditures on PIP claims.

11           2.13   The effect of the joint enterprise was that each of the Defendant USAA  
12 insurance companies failed to pay all reasonable medical expenses of its insured under the  
13 insured's PIP coverage. Instead they engage in a systematic practice of unfairly depriving its  
14 injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by  
15 suspending medical payments until after completion of an "independent" medical exam (IME).

16 2.14 In practice, the same person or persons have the ability to change, amend, enact  
17 or alter the practices of the Defendant USAA insurance companies at issue in this action. These  
18 individuals have the ability to discontinue Defendants' unlawful practices.

19 .. 2.15 Plaintiff was subjected to the above described practices of the Defendants' joint  
20 enterprise.

### III. JURISDICTION AND VENUE

22 3.1 This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 4.28.185.

23 3.2 At all times relevant, Plaintiff resided in King County.

24

25

26

**CLASS ACTION COMPLAINT - 6**

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1           3.3     At all times relevant, each of the Defendant USAA companies has conducted  
2 substantial business and many of the alleged breaches took place within King County,  
3 Washington.

4 3.4 Pursuant to RCW 4.12.025, venue is proper in King County Superior Court.

#### IV. FACTUAL ALLEGATIONS

**A. Plaintiffs' Individual Factual Allegations**

7           4.1 Plaintiff re-alleges and incorporates the allegations set forth in paragraphs 1.1  
8 through 3.4 above, as if fully set forth in this paragraph.

9           4.2 Plaintiff was injured in an automobile accident on August 28, 2011. Plaintiff  
10          treated for injuries sustained in his automobile accident and submitted his medical bills to  
11          USAA for payment under her PIP coverage.

12       4.3     On March 15, 2012 USAA notified Plaintiff by letter that USAA is suspending  
13 payment of PIP coverage benefits and refusing to pay retroactively for treatment already  
14 provided, pending an IME.

15 As a result of injuries sustained in an automobile accident, Plaintiff has incurred  
16 reasonable and necessary medical bills which USAA has refused to pay and because of the  
17 suspension of payment Plaintiff is deterred from seeking additional necessary treatment.

18 4.4 The Putative Class incorporates herein by reference each and every allegation  
19 contained in paragraphs 1.1 to 4.4 above as if fully set forth here.

## V. CLASS ALLEGATIONS

21 5.1 Plaintiff and the Putative class incorporate by reference each and every factual  
22 allegation set forth in paragraphs 1.1 to 4.4 herein by this reference as if set forth in its entirety.

23 5.2 Plaintiff brings all claims herein as class claims pursuant to Civil Rule  
24 ("CR") 23 and Local Rule ("LR") 23.

1       5.3     The class consists of all insured, as defined in the Personal Injury Protection and  
2 MED PAY coverage portions of USAA's policies, and all third-party beneficiaries of such  
3 coverage, issued in the state of Washington with respect to whom USAA:(a) retroactively  
4 disallowed coverage for medical expenses more than thirty (30) days after Farmers received  
5 the bill for the insured's care, and (b) suspended and/or withheld payments for necessary  
6 treatment pending a future evaluation by USAA 's "independent" medical examiners. Excluded  
7 from the class are Farmers' executives, counsel, and their immediate family members. The time  
8 period for the class is six years preceding the date of filing of this lawsuit up to the date of  
9 settlement or judgment.

10       5.4     Plaintiff and the Class seek a declaratory judgment that USAA's practices were  
11 unfair, wrongful and/or deceptive and restitution and/or disgorgement, and/or damages and  
12 injunctive relief under the Declaratory Judgment Act, the common law, the Washington  
13 Insurance Code and the Washington Consumer Protection Act, RCW 19.86 et seq.

14       5.5     Class certification is proper under CR 23(a) (1) because the members of the  
15 class total more than 1,000 who are geographically dispersed over numerous cities and counties  
16 in the state of Washington.

17       5.6     Because of the number of Class members and their geographic dispersion,  
18 individual joinder of each putative class member is not practicable.

19       5.7     Class certification is proper under CR 23(a)(2) because USAA has undertaken  
20 common policies and practices with regard to suspension and retroactive denial of PIP  
21 payments. Among these common questions are:

22       a.       Whether USAA's retroactive denial of coverage for medical care, more than 30  
23 days after USAA received the bill for the injured person's care, constitute an illegal,  
24 unfair, or deceptive practice under Washington's insurance code and/or Consumer Protection  
25 Act?

26       CLASS ACTION COMPLAINT - 8

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1                   b.     Whether USAA's retroactive denial of coverage for medical care, more than 30  
2 days after USAA received the bill for the injured person's care, breach Farmer's contractual  
3 duty of good faith and fair dealing?

4                   c.     Whether USAA's practice of suspending payments of insurance benefits before  
5 it has completed its investigation constitute a tortious and/or unfair claims- handling process?

6                   d.     Whether USAA's retroactive denial of coverage for medical care, more than 30  
7 days after USAA received the bill for the injured person's care, an illegal, unfair, or deceptive  
8 practice under Washington's insurance code and/or Consumer Protection Act?

9                   e.     Whether USAA's retroactive denial of coverage for medical care, more than 30  
10 days after USAA received the bill for the injured person's care, breach USAA's quasi-fiduciary  
11 duty to the class members?

12                  f.     Whether USAA engages in a systematic practice of unfairly depriving its  
13 injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by  
14 suspending medical payments until after completion of an (IME)?

15                  g.     Whether USAA delayed payment of PIP claims in violation of WAC  
16 §284.30.330 et seq?

17                  h.     Whether USAA was unjustly enriched by any of its unfair, wrongful and/or  
18 deceptive practices that violated the WAC, the Insurance Code, or the CPA.

19                5.7.    Class certification is proper under CR 23(a)(3) because Plaintiff's claims are  
20 typical of the claims of the members of the putative class and USAA's defenses to the claims  
21 of Plaintiff are also typical of the defenses to such claims. The claims and defenses are typical  
22 because they arise out of the same common policies and practices which USAA applied to the  
23 reimbursement of bills submitted by all Washington insureds' PIP coverage. The claims arise  
24 from the same unfair, wrongfully and deceptive scheme undertaken by Defendants to deprive  
25 Washington insureds of their full PIP coverage.

26

CLASS ACTION COMPLAINT - 9

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       5.8    Class certification is proper under CR 23(a)(4) because Plaintiff can fairly and  
2 adequately represent the interests of the other members of the class. He has no interests that  
3 conflict with those of the members of the class. It is in his interest and those of the other  
4 members of the class that they be paid fully for their medical expenses. Plaintiff has retained  
5 skilled attorneys who have represented claimants and class members with similar claims to  
6 those brought in this lawsuit. Plaintiff's counsel have been appointed class counsel in other  
7 cases involving similar claims.

8       5.9    Class certification is proper under CR 23(b)(3) because the questions of law and  
9 fact common to the class, as set forth above in paragraph 5.6 predominate over any questions  
10 affecting only individual members of the class. Common questions predominate because  
11 USAA undertook a common course of conduct towards all members of the class regarding  
12 requests for reimbursement submitted under the insured's PIP coverage.

13       5.10   Class certification is proper under CR 23(b)(3) because a class action is a  
14 superior method for adjudicating the claims of the members of the class than hundreds of  
15 individual actions in numerous cities and counties of Washington that raise the identical factual  
16 and legal issues.

17       5.11   Class certification is a superior method of adjudicating the claims because the  
18 individual class members have little interest in individually controlling the prosecution of their  
19 claims.

20       5.12   Class certification is a superior method of adjudicating the claims because there  
21 is no significant individual litigation already commenced by Washington insureds against  
22 USAA raising the identical claims.

23       5.13   Class certification is a superior method of adjudicating the claims because it is  
24 desirable to concentrate the litigation and claims in a single forum to avoid duplicity of actions  
25 and inconsistent adjudications of identical claims. King County is a desirable forum for  
26

CLASS ACTION COMPLAINT - 10

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 litigation of the class claims because it is most likely the place where most class members are  
2 located and where the Defendants' in-state witnesses are likely located. The cost to the court  
3 system of individualized litigation would be substantial.

4 5.14 Class certification is a superior method of adjudicating the claims because there  
5 are few difficulties likely to be encountered in the adjudication of the class members' legal  
6 claims.

7 **VI. LEGAL CLAIMS AND CAUSES OF ACTION**

8 **COUNT I: DECLARATORY JUDGMENT ACT CLAIM**

9 6.1 Plaintiffs re-allege each and every allegation as set forth in paragraphs 1.1 to  
10 5.16 above as through set forth here.

11 6.2 Washington law requires all automobile insurers to provide PIP coverage that  
12 will pay all reasonable medical expenses of its insured arising from a covered automobile  
13 accident. RCW 48.22.005(7).

14 6.3 The Washington insurance code declares, *inter alia*, that "[t]he business of  
15 insurance...requir[es] that all persons be actuated by good faith, abstain from deception, and  
16 practice honesty and equity in all insurance matters." RCW 48.01.030. It also  
17 prohibits insurance companies from engaging in unfair or deceptive acts or practices in the  
18 conduct of their business. RCW 48.30.010. Specific acts that the Insurance Commissioner has  
19 defined to be unfair claims-handling practices in violation of the insurance code 30 WAC 284-  
20 30-330 include:

21 •Misrepresenting pertinent facts or insurance policy provisions.  
22 •Failing to acknowledge and act reasonably promptly upon communications with  
23 respect to claims arising under insurance policies.  
24 •Failing to adopt and implement reasonable standards for the prompt investigation of  
25 claims arising under insurance policies.

26 **CLASS ACTION COMPLAINT - 11**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

- 1       •Failing to affirm or deny coverage of claims within a reasonable time after proof of
- 2       loss statements have been completed.
- 3       •Failing to promptly provide a reasonable explanation of the basis in the insurance
- 4       policy in relation to the facts or applicable law for denial of a claim or for the offer of a
- 5       compromise settlement
- 6       •Failure to adopt and implement reasonable standards for the processing and payment
- 7       of claims once the obligation to pay has been established.

8       6.4      Under Washington law, it is unlawful for an automobile insurer to deny a claim  
9       under the insurance policy without conducting a reasonable investigation of the claim. WAC  
10      §284-30-330.

11      6.5      Under Washington law, "[e]very insurer, upon receiving notification of claim,  
12       shall promptly provide necessary claim forms, instructions, and reasonable assistance so that  
13       first party claimants can comply with the policy conditions and the insurer's reasonable  
14       requirements." WAC 284-30-360.

15      6.6      Under Washington law, "[e]very insurer shall complete investigation of a claim  
16       within thirty days after notification of claim, unless such investigation cannot reasonably be  
17       completed within such time." WAC 284-30-370.

18      6.7      Under Washington law, [w]ithin fifteen working days after receipt by the  
19       insurer of properly executed proofs of loss, the first party claimant shall be advised of the  
20       acceptance or denial of the claim by the insurer." WAC 284-30-370.

21      6.8      The foregoing provisions of the insurance code can be enforced through the  
22       private right of action created by the state legislature in the Washington Consumer Protection  
23       Act: "actions and transactions prohibited or regulated under the laws administered by the  
24       insurance commissioner shall be subject to the provisions of RCW 19.86.020 and all sections  
25

26       **CLASS ACTION COMPLAINT - 12**

KORNFIELD, TRUDELL, BOWEN &  
LJNGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 fax (425) 893-8712  
Rob@kornfeldlaw.com

1 of chapter RCW 19.86 which provide for the implementation and enforcement of RCW  
2 19.86.020." RCW 19.86.170.

3 6.9 USAA's practice of unfairly depriving its injured insureds of their full PIP  
4 medical benefits by denying coverage retroactively and/or by suspending medical payments  
5 until after completion of an "independent" medical exam should be declared an unfair  
6 insurance practice because USAA fails to conduct a reasonable investigation of the claim  
7 before denying payment.

8 6.10 The Washington Insurance Code provides that: "No person engaged in the  
9 business of insurance shall engage in unfair or deceptive acts or practices in the conduct of  
10 such business." RCW 48.30.010(1).

11 6.11 The Washington Insurance Code provides in pertinent part: "No person shall  
12 disseminate any deceptive or misleading representation in the conduct of the business of  
13 insurance or relative to the business of insurance." RCW 48.30.040.

14 6.12 USAA's practice of unfairly depriving its injured insureds of their full PIP  
15 medical benefits by denying coverage retroactively and/or by suspending medical payments  
16 until after completion of an "independent" medical exam should be declared an unfair  
17 insurance practice because it is deceptive and misleading.

18 6.13 Each and every practice identified above should be declared an unfair and/or  
19 deceptive practice under the Insurance Code and the Consumer Protection Act.

20 **COUNT II: VIOLATION OF CONSUMER PROTECTION ACT**

21 6.14 Plaintiffs re-allege each and every allegation as set forth in paragraphs 1.1 to  
22 6.13 above as through set forth here.

23 6.15 The Washington Insurance Code prohibits the use of unfair or deceptive  
24 practices in the business of insurance. RCW 48.30.010(1). A violation of the Insurance Code  
25  
26

CLASS ACTION COMPLAINT - 13

KORNFIELD, TRUDELL, BOWEN &  
LINGENJERINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 constitutes a per se violation of Washington Consumer Protection Act, RCW 19.86 et. seq.  
2 [“CPA”].

3       6.16 Each and every practice identified in paragraphs 6.8 – 6.13 above is an unfair  
4 and/or deceptive practice that violates the CPA. Each of the practices is a per se violation of the  
5 CPA, because each violates the Insurance Code.

6       A.    USAA’s Unfair and Deceptive Practices in Violation of CPA AND IN BAD  
7       FAITH

8       6.17 USAA has engaged in a systematic practice of reviewing medical claims of  
9 covered individuals many months after the individual received treatment and submitted the  
10 bills, and then retroactively denying coverage on the grounds that USAA, with the benefit of  
11 hindsight, believes that the care was not reasonable or necessary. USAA has repeatedly  
12 notified injured parties that coverage for continuing care is denied effective prior to the  
13 notification.

14       6.18 USAA has engaged in a widespread and systematic practice of suspending  
15 benefits until USAA can have its insureds see a biased, but ostensibly "independent,"  
16 medical examiner. That examiner, in turn, will routinely write a report resulting in further  
17 retroactive denial of benefits.

18       6.19 USAA does not provide timely notification to injured insureds that, in USAA's  
19 opinion, their medical treatment is unnecessary and further claims will be denied. Instead, this  
20 notification routinely comes months after treatment was received. This practice causes accident  
21 victims to continue treating their injuries and incur substantial personal liability, despite their  
22 reasonable reliance that such treatments will be covered by the insurance that they dutifully  
23 paid for.

24       6.20 USAA's practice also denies insureds and third-party beneficiaries the  
25 opportunity to have their treating physicians or other health care providers dispute USAA's  
26

CLASS ACTION COMPLAINT - 14

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 "independent" conclusions on a timely basis (i.e., when treatment is actually being given, as  
2 opposed to months later). USAA's retroactive denial of coverage is not actuated by good faith  
3 and equity, as required by the insurance code. Furthermore, USAA's practice of suspending  
4 benefits before properly investigating the merits of the suspension violates USAA's obligation  
5 to adequately and properly investigate an insured's claim..

6       6.21 The abovementioned practices of USAA violate the Washington insurance  
7 code and insurance regulations and the Washington State Consumer Protection Act, and  
8 constitute a breach of: (a) USAA's statutory and contractual obligations of good faith and  
9 fair dealing; (b) USAA's quasi- contractual duties; and (c) USAA's duty to handle claims in  
10 a fair and reasonable manner.

11       6.22 Plaintiff and the class also allege that USAA owed and violated three  
12 fiduciary duties: (1) the duty to disclose all facts that would aid its insureds in protecting  
13 their interests; (2) the duty of equal consideration; and (3) the duty not to mislead its insureds.  
14 USAA's failure to pay medical care already incurred also represents a violation of WAC  
15 284.30.395.

16       6.23 Plaintiff and the Class also suffered an injury to their property and/or business  
17 caused by USAA's unfair and deceptive practices by having to expend out of pocket expenses  
18 in relation to the payment of their medical bills.

19       6.24 USAA routinely and systematically underpaid Plaintiff and the Class and as a  
20 direct and proximate result of USAA's unfair and deceptive practices described above, Plaintiff  
21 and the Class suffered injuries to their property and/or business and damages in amounts to be  
22 proven at the time of trial.

23       6.25 Plaintiff and the Class would have acted differently had USAA not engaged in  
24 the unfair and deceptive acts described above and they would have received additional  
25 necessary medical care and treatment had their coverage not been denied.

26

CLASS ACTION COMPLAINT - 15

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       6.26 Plaintiff and the Class would have acted differently had USAA disclosed all  
2 material facts concerning its duties under the policy and under Washington law.

3       6.27 But for USAA's unfair and deceptive conduct as alleged above, Plaintiff and the  
4 Class would not have suffered injury or damage.

5       6.28 USAA is liable to Plaintiff and the Class for statutory, actual and treble  
6 damages, prejudgment interest, attorneys' fees and costs and injunctive relief under the CPA.

7                   **COUNT III: BREACH OF CONTRACT**

8       6.29 Plaintiff and the Class incorporate each and every allegations made in  
9 paragraphs 1.1- 6.28 above as though fully set forth herein.

10       6.30 USAA, by its acts and omissions described in this complaint, breached and  
11 continues to breach its duties of good faith and fair dealing and its "enhanced obligation of  
12 fairness towards its insured," which are all implicit in USAA's insurance contracts. *Safeco*  
13 *Ins. Co. of Amer. v. Butler.*

14       6.31 USAA's specific breaches include, but are not limited to (a) refusing to pay  
15 the amount of medical benefits it is contractually obligated to pay, and (b) failing to meet  
16 its duties of good faith and fair dealing by retroactively denying medical coverage months  
17 after receiving notice of an insured's treatment and/or suspending coverage pending an  
18 examination by one of its "independent" examiners. .

19       6.32 Plaintiff and the proposed class have been damaged by USAA's breaches,  
20 while USAA has unreasonably profited from them.

21       6.33 Plaintiff and the proposed class are entitled to declaratory and injunctive relief  
22 prohibiting USAA from engaging in the breaches alleged in this complaint.

23       6.34 They are also entitled to damages in an amount to be proven at trial,  
24 together with prejudgment interest, expenses, and costs.

25  
26

CLASS ACTION COMPLAINT - 16

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 6.35 Plaintiff and the Class performed all of the terms of the contract, when they  
2 submitted their bills for payment to USAA rather than the insured.

3 6.36 USAA breached the contract by not paying the Plaintiff's and Class member's  
4 bill in full but instead reducing the payment based on due to code 41.explanation and/or what it  
5 assumed was the 90<sup>th</sup> percentile of provider charges in the provider's geographic area.

## VII. DAMAGES

7           7.1 Plaintiff and the Class incorporate each and every allegation made in paragraphs  
8           1.1 - 6.67 above as though fully set forth herein.

9       7.2     As a direct and proximate result of USAA's wrongful conduct and breach of  
10 contract, described above, the Plaintiff and the Class sustained injury to their property and  
11 business and damages in amount that will be established at trial, but which amount is  
12 substantially less than \$5,000,000.

7.3 The injury and damages include but is not limited to loss of money from underpayment of their bills, delayed payment of their bills and breach of contract, nominal and exemplary damages, and out of pocket expenses.

16 7.4 There is no reasonable basis to believe that these damages exceed \$5,000,000.

## VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class respectfully pray that this Court enter judgment  
on each cause of action alleged herein in favor of Plaintiff and the Class and against all  
Defendants and that it award damages, equitable and injunctive relief enjoining Defendants  
from the actions alleged herein and that the Court grant such additional relief as follows:

23 7.1 Certification of this action as a Class Action pursuant to CR 23.  
24 7.2 Award actual damages to be established at trial;  
25 7.3 Award statutory damages;  
26 7.4 Award reasonable attorney's fees and costs as provided by law;

**CLASS ACTION COMPLAINT - 17**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       6.37 Enter a Declaratory Judgment that Defendants' acts described above, and as  
2 established at trial, are unfair and deceptive acts that violate the Washington Insurance Code  
3 and Washington Administrative Code, and that Defendants are required to pay all reasonable  
4 and necessary medical expenses of the Plaintiff until such time as there is an independent  
5 determination that they are not reasonable and necessary or the PIP policy limits have been  
6 met..

7           7.5     Enjoin defendants from continued violation of the Washington Consumer  
8     Protection Act, RCW 19.86.010 *et seq.*;

7.6 Finding that USAA's actions constitute violation of the Washington Consumer Protection Act, RCW 19.86.010 *et seq.*

11 7.7 Award Plaintiff and the Class restitution, disgorgement, declaratory relief,  
12 and/or actual damages for USAA's unfair, wrongful and/or deceptive acts and conduct;

## 7.8 Award plaintiffs and the Class prejudgment interest;

14           7.9 Award plaintiffs and Class treble, exemplary and/or punitive damages up to the  
15 maximum amount permitted by Washington law;

**16 7.10 Award plaintiffs and the Class, expert fees, disbursements and costs of suit;**

17 7.11 Award such other relief as the court deems equitable, appropriate or just.

18 Dated: April 11, 2012

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK, PLLC

By:

Robert B. Kornfeld, WSB#10669  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

CLASS ACTION COMPLAINT - 18

**KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK** Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 891-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 HOUCK LAW FIRM, PS  
2  
3 By: \_\_\_\_\_  
4 William Houck, WSBA #13324  
5 4045 262<sup>nd</sup> AVE. SE  
6 Issaquah, WA 98029  
7 (425) 392-7118 Fax (425) 337-0916  
8 houcklaw@gmail.com  
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CLASS ACTION COMPLAINT - 19

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
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Rob@kornfeldlaw.com



P.O. BOX 40255  
OLYMPIA, WA 98504-0255  
04-2015



91 7199 9991 7030 0873 4617

USAA CASUALTY INSURANCE COMPANY  
CT CORPORATION SYSTEM  
1801 WEST BAY DR NW STE 206  
OLYMPIA WA 98502



CT Corporation

**Service of Process  
Transmittal**  
05/04/2012  
CT Log Number 520456268

**TO:** Enterprise Litigation  
United Services Automobile Association  
9800 Fredericksburg Road, E-3-E  
San Antonio, TX 78288-5038

**RE:** **Process Served in Washington**

**FOR:** USAA General Indemnity Company (Domestic State: TX)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Tara Cote, etc., Pltf. vs. United Service Automobile Association, etc., et al. including USAA General Indemnity Company, etc., Dfts.

**DOCUMENT(S) SERVED:** Certificate of Service, Order, Summons, Class Action Complaint

**COURT/AGENCY:** King County - Kent - Superior Court, WA  
Case # 122126372KNT

**NATURE OF ACTION:** Insurance Litigation - Dft. engages in a systematic practice of unfairly depriving its injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by suspending medical payments until after completion of an "independent" medical exam or a records review or a peer review // Seeking Declaratory Judgment and Demand for Jury Trial

**ON WHOM PROCESS WAS SERVED:** CT Corporation System, Olympia, WA

**DATE AND HOUR OF SERVICE:** By Certified Mail on 05/04/2012 postmarked on 05/03/2012

**JURISDICTION SERVED :** Washington

**APPEARANCE OR ANSWER DUE:** Within 20 days after service, excluding the day of service - Response to Complaint (See document for additional deadlines)

**ATTORNEY(S) / SENDER(S):** Robert B. Kornfeld  
Kornfeld, Trudell, Bowen & Lingenbrink Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, WA 98033  
(425)893-8989

**REMARKS:** Process served/received by Insurance Commissioner on May 3, 2012 and mailed to CT Corporation System on May 3, 2012

**ACTION ITEMS:** CT has retained the current log, Retain Date: 05/04/2012, Expected Purge Date: 05/09/2012  
Image SOP  
Email Notification, Enterprise Litigation Linda.Allen@usaa.com

**SIGNED:** CT Corporation System  
**PER:** Michele Rowe  
**ADDRESS:** 1801 West Bay Drive NW  
Suite 206  
Olympia, WA 98502  
**TELEPHONE:** 360-357-6794

Page 1 of 1 / TO

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

TARA COTE, individually and on behalf of the )  
class of similarly situated persons and entities, )  
Plaintiffs, ) NO. 12-2-12637-2 KNT  
vs. ) INSURANCE COMMISSIONER'S  
United Service Automobile ) CERTIFICATE OF SERVICE  
Association, a foreign corporation, USAA )  
General Agency, Inc., a foreign )  
corporation, USAA Insurance Agency, a )  
foreign corporation, USAA Casualty )  
Insurance Company, a foreign )  
corporation, USAA General Indemnity )  
Company, a foreign corporation, )  
Defendants. )

---

THIS IS TO CERTIFY that the Insurance Commissioner of the State of Washington has accepted service of

***SUMMONS; COMPLAINT; ORDER SETTING CIVIL CASE SCHEDULE***

in the above-mentioned matter on May 3, 2012, on behalf of and as statutory attorney for

***USAA GENERAL INDEMNITY COMPANY***

an authorized foreign or alien insurer, and has forwarded a duplicate copy thereof to said insurance company pursuant to RCW 48.02.200 and 48.05.200.

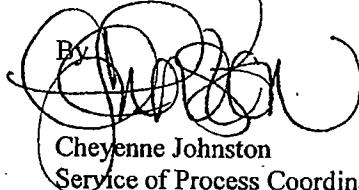
Receipt of the \$10 statutory service fee is acknowledged.

ISSUED AT OLYMPIA, WASHINGTON: May 3, 2012

Certification No.: 91 7199 9991 7030 0873 4976

**MIKE KREIDLER**  
Insurance Commissioner

By

  
Cheyenne Johnston  
Service of Process Coordinator

**Original to:**

Robert B. Kornfield  
Kornfield Trudell Bowen & Lingenbrink, PLLC  
3724 Lake Washington Blvd. NE  
Kirkland, WA 98033

**Copy to:**

USAA General Indemnity Company  
CT Corporation System  
1801 West Bay Drive NW, Suite 206  
Olympia, WA 98502

Tracker ID 8525



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

TARA COTE	Plaintiff(s)	NO. 12-2-12637-2 KNT
vs		Order Setting Civil Case Schedule (*ORSCS)
USAA	Defendant(s)	ASSIGNED JUDGE Gain 14
		FILE DATE: 04/12/2012
		TRIAL DATE: 09/09/2013

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

**NOTICE TO PLAINTIFF:** The Plaintiff may serve a copy of this Order Setting Case Schedule (*Schedule*) on the Defendant(s) along with the *Summons and Complaint/Petition*. Otherwise, the Plaintiff shall serve the *Schedule* on the Defendant(s) within 10 days after the later of: (1) the filing of the *Summons and Complaint/Petition* or (2) service of the Defendant's first response to the *Complaint/Petition*, whether that response is a *Notice of Appearance*, a response, or a Civil Rule 12 (CR 12) motion. The *Schedule* may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

*"I understand that I am required to give a copy of these documents to all parties in this case."*

Print Name

Sign Name

## I. NOTICES (continued)

### **NOTICE TO ALL PARTIES:**

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] -- especially those referred to in this *Schedule*. In order to comply with the *Schedule*, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLR 26], and for meeting the discovery cutoff date [See KCLR 37(g)].

### **CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:**

A filing fee of \$230 must be paid when any answer that includes additional claims is filed in an existing case.

### **KCLR 4.2(a)(2)**

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

### **PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:**

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

**If you miss your scheduled Trial Date,** the Superior Court Clerk is authorized by KCLR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

### **NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:**

*All parties to this action must keep the court informed of their addresses.* When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

### **ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:**

A Statement of Arbitrability must be filed by the deadline on the schedule if the case is subject to **mandatory arbitration** and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. **Any party filing a Statement must pay a \$220 arbitration fee.** If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

### **NOTICE OF NON-COMPLIANCE FEES:**

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

**King County Local Rules are available for viewing at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).**

## II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Thu 04/12/2012	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. <b>\$220 arbitration fee must be paid</b>	Thu 09/20/2012	*
DEADLINE to file Confirmation of Joinder if not subject to Arbitration. [See KCLCR 4.2(a) and Notices on Page 2].	Thu 09/20/2012	*
DEADLINE for Hearing Motions to Change Case Assignment Area. [See KCLCR 82(e)]	Thu 10/04/2012	
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLCR 26(b)].	Mon 04/08/2013	
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLCR 26(b)].	Mon 05/20/2013	
DEADLINE for Jury Demand [See KCLCR 38(b)(2)].	Mon 06/03/2013	*
DEADLINE for Setting Motion for a Change in Trial Date [See KCLCR 40(e)(2)].	Mon 06/03/2013	*
DEADLINE for Discovery Cutoff [See KCLCR 37(g)].	Mon 07/22/2013	
DEADLINE for Engaging in Alternative Dispute Resolution [See KCLCR 16(b)].	Mon 08/12/2013	
DEADLINE for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLCR 4(j)].	Mon 08/19/2013	
DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16(a)(2)].	Mon 08/19/2013	*
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56; CR 56].	Mon 08/26/2013	
Joint Statement of Evidence [See KCLCR (4)(k)].	Tue 09/03/2013	*
DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file Proposed Findings of Fact and Conclusions of Law with the Clerk)	Tue 09/03/2013	*
Trial Date [See KCLCR 40].	Mon 09/09/2013	

## III. ORDER

Pursuant to King County Local Civil Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Civil Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 04/12/2012


PRESIDING JUDGE

#### **IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE**

##### **READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE**

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

**COMPLEX LITIGATION:** If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

**APPLICABLE RULES:** Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

##### **CASE SCHEDULE AND REQUIREMENTS**

Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

##### **THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.**

###### **A. Joint Confirmation regarding Trial Readiness Report:**

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment, etc.).

The form is available at <http://www.kingcounty.gov/courts/superiorcourt.aspx>. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding said report.

###### **B. Settlement/Mediation/ADR**

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.

**C. Trial:** Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website <http://www.kingcounty.gov/courts/superiorcourt.aspx> to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

#### **MOTIONS PROCEDURES**

##### **A. Noting of Motions**

**Dispositive Motions:** All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Nondispositive Motions:** These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Motions in Family Law Cases not involving children:** Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Emergency Motions:** Under the court's local civil rules, emergency motions will be allowed only upon entry of an Order Shortening Time. However, emergency discovery disputes may be addressed by telephone call and without written motion, if the judge approves.

## **B. Original Documents/Working Copies/ Filing of Documents**

**All original documents must be filed with the Clerk's Office.** Please see information on the Clerk's Office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding the new requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. On June 1, 2009 you will be able to submit working copies through the Clerk's office E-Filing application at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).

**Service of documents.** E-filed documents may be electronically served on parties who opt in to E-Service within the E-Filing application. The filer must still serve any others who are entitled to service but who have not opted in. E-Service generates a record of service document that can be e-filed. Please see information on the Clerk's office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding E-Service.

**Original Proposed Order:** Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. Do not file the original of the proposed order with the Clerk of the Court. Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order.

**Presentation of Orders:** All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

**Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. If final order and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.**

**C. Form**

Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

**IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PEITITONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.**



---

PRESIDING JUDGE

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

TARA COTE, individually and on behalf of the class of similarly situated persons and entities,

**Plaintiffs,**

vs.

Cause No.: 12-2-12637-2 KNT

## SUMMONS

UNITED SERVICE AUTOMOBILE  
ASSOCIATION, a foreign corporation, USAA  
GENERAL AGENCY, INC., a foreign  
corporation, USAA INSURANCE AGENCY, a  
foreign corporation, USAA CASUALTY  
INSURANCE COMPANY, a foreign  
corporation, USAA GENERAL INDEMNITY  
COMPANY, a foreign corporation,

## Defendants.

**TO THE DEFENDANTS:**

A lawsuit has been started against you in the above-entitled court by plaintiff.

Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within twenty (20) days after service of this summons, excluding the day of service, or

**SUMMONS - 1**

**KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK** Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 within sixty (60) days of service if made upon you outside the State of Washington, or a default  
2 judgment may be entered against you without notice. A default judgment is one where plaintiff  
3 is entitled to what he asks for because you have not responded. If you serve a notice of  
4 appearance on the undersigned person, you are entitled to notice before a default judgment may  
5 be entered.

6 You may demand that the plaintiff file this lawsuit with the court. If you do so, the  
7 demand must be in writing and must be served upon the person signing this summons. Within  
8 fourteen (14) days after you serve the demand, the plaintiff must file this lawsuit with the court,  
9 or the service on you of this summons and complaint will be void.

10 If you wish to seek advice of an attorney in this matter, you should do so promptly so  
11 that your written response, if any, may be served on time.

12 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the  
13 State of Washington.

14 Dated: April 11, 2012

15 KORNFIELD, TRUDELL, BOWEN &  
16 LINGENBRINK, PLLC

17 By: Robert B. Kornfeld  
18 Robert B. Kornfeld, WSBA #10669  
19 3724 Lake Washington Blvd NE  
20 Kirkland, Washington 98033  
21 (425) 893-8989 Fax (425) 893-8712  
22 Rob@kornfeldlaw.com

17 HOUCK LAW FIRM, P.S.

18 By: William Houck, WSBA #13324  
19 4045 262<sup>nd</sup> AVE. SE  
20 Issaquah, WA 98029  
21 (425) 392-7118 ax (425) 337-0916  
22 houcklaw@gmail.com

23  
24  
25  
26 SUMMONS - 2

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
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1 2 3 4 5 6 7

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

10 TARA COTE, individually and on behalf of the class of similarly situated persons and entities.

**Plaintiffs.**

vs.

13 UNITED SERVICE AUTOMOBILE  
14 ASSOCIATION, a foreign corporation, USAA  
15 GENERAL AGENCY, INC., a foreign  
16 corporation, USAA INSURANCE AGENCY, a  
17 foreign corporation, USAA CASUALTY  
INSURANCE COMPANY, a foreign  
corporation, USAA GENERAL INDEMNITY  
COMPANY, a foreign corporation,

### Defendants.

Cause No.: 12-2-12637-2 KNT

## CLASS ACTION

**COMPLAINT FOR DECLARATORY  
JUDGMENT, VIOLATION OF RCW §§  
19.86, UNJUST ENRICHMENT and  
BREACH OF CONTRACT CLAIM**

DEMAND FOR JURY TRIAL.

Plaintiff, Tara Cote, [hereinafter, "Cote" or "Plaintiff"] individually and on behalf of all  
members of the Class of similarly situated Washington insureds alleges the following  
Complaint and causes of action against Defendants United Services Automobile Association,  
USAA General Agency, Inc., USAA Insurance Agency, USAA Casualty Insurance Company,  
and USAA General Indemnity Company (hereinafter "":)

CLASS ACTION COMPLAINT - 1

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

## I. PRELIMINARY STATEMENT

**A. Defendant USAA Provides PIP/MED PAY Coverage in Washington**

3           1.1     At all time relevant, each of the Defendant USAA insurance companies has sold  
4 automobile insurance in Washington. USAA, as an automobile insurers in Washington, is  
5 required by law to provide “Personal Injury Protection” or “PIP” and/or MED PAY coverage  
6 in their automobile insurance policies that would pay each insured’s “reasonable and necessary”  
7 medical and hospital benefits” up to \$10,000 arising from a covered automobile accident

8        1.2    Defendant USAA engages in a systematic practice of unfairly depriving its  
9    injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by  
10   suspending medical payments until after completion of an “independent” medical exam (IME)  
11   or a records review or a peer review. These “retroactive denials” of coverage occur days,  
12   weeks or months after the claimants have received treatment for their injuries and amount to  
13   a failure to pay claims that have already occurred. The “suspensions of medical payments”  
14   unfairly deny and suspend medical coverage until the completion of the IME or some other  
15   review. These unfair practices can spell financial ruin for insureds, who are receiving necessary  
16   care for their injuries but are unable to reasonably rely upon their PIP insurance coverage to  
17   pay for their treatment, and can cause a loss of health care which can make their injuries and  
18   conditions worse, thereby, increasing pain and suffering. Neither the contract of insurance nor  
19   USAA’s claims department give notice to the insureds that USAA routinely denies coverage  
20   retroactively or suspends coverage for day, weeks or months on end.

1.3 With respect to “retroactive denial of coverage”, USAA fails to maintain a consistent, timely, and fair process for pre-treatment authorization or for contemporaneous authorization, nor does it give notice of this practice, a practice which is in bad faith and denial of PIP and MED PAY benefits. Instead, days, weeks or months after treatment has taken place, USAA unilaterally, without foundation or medical evidence, denies further and past care and

**CLASS ACTION COMPLAINT - 2**

**KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK** Robert B. Kornfeld, Inc., P.S.  
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1 treatment. USAA utilizes "independent" medical examiners or other reviews by health care  
2 providers, who may or may not be qualified, to conduct a medical review of the insured. These  
3 examiners are paid exclusively by USAA to make a determination as to whether that treatment  
4 was "reasonable and necessary" or caused by the collision at issue. When coverage is denied,  
5 the denial is retroactive such that the insured party is neither notified nor aware that the  
6 treatment will not be covered until long after treatment has actually occurred. With respect to  
7 "suspension of coverage", USAA denies and suspends coverage before there is a determination  
8 that the treatments are not reasonable and necessary or there is a causation issue.

9       1.4     At all times relevant, USAA's automobile insurance policies in Washington  
10 have not stated that payment of medical and hospital benefits under the PIP and MED PAY  
11 coverage is subject to retroactive denial of coverage or suspension pending an "independent"  
12 medical examination, records review or peer review (hereafter referred to collectively as an  
13 IME) or that this can be accomplished on the whim of an insurance adjuster without any  
14 medical evidence and without the proper foundation and authority to support such a unilateral  
15 decision.

16       1.5     USAA is obligated contractually and under Washington Insurance law to  
17 process PIP claims in a fair and timely manner and to comply with the WAC governing  
18 Insurance Practices. USAA is required to rely on the facts as they appear at the time the  
19 treatment is given as opposed to the opinions of its potentially biased medical  
20 examiners days, weeks or months after the date of treatment.

21       1.6     USAA is prohibited from retroactively denying coverage and/or  
22 unilaterally deciding to suspend payments until an examination can take place.

23       1.7     USAA wrongful conduct violates the Washington State Insurance Code  
24 and the Washington State Consumer Protection Act, and violates USAA's statutory and  
25 contractual duties of good faith and fair dealing and duty to handle claims in a fair and  
26

**CLASS ACTION COMPLAINT - 3**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 reasonable manner. USAA has been "guilty" of bad faith in the payment of MED PAY  
2 and PIP benefits in these regards.

3       1.8     USAA's conduct violated its fiduciary duties to its insureds: (1) the duty  
4     to conduct a reasonable investigation before denying or suspending coverage (2) the  
5     duty to disclose all facts that would aid its insureds in protecting their interests;  
6     (3) the duty of equal consideration; (4) the duty not to mislead its insureds and the  
7     duty to follow the Washington State Insurance regulations.

8           1.9 Plaintiff, on behalf of himself and others similarly situated, seeks damages for  
9 USAA's illegal practices and seeks declaratory and injunctive relief compelling USAA to  
10 adopt fair and equitable claims-handling procedures regarding the issues raised in this action.

## 11. C. The “USAA Group of Insurance Companies” Acts for USAA

12        1.10 At all times relevant, the Defendant USAA companies have processed,  
13 reviewed, adjust and/or paid Washington insured's PIP and MED PAY coverage using the  
14 name, "The USAA Group of Insurance Companies." The name "The USAA Group of  
15 Insurance Companies" has referred to all of the Defendant USAA insurance companies over  
16 the relevant time period.

17        1.11    At all times relevant, the Defendant USAA companies have communicated to  
18 Washington insureds what actions they have taken on bills submitted by them for medical  
19 expenses under the PIP and MED APY coverage through EOB forms that bear the name "The  
20 USAA Group of Insurance Companies".

## II. PARTIES

22        2.1    Tara Cote is a USAA insured who had his PIP benefits retroactively denied and  
23 suspended pending USAA's peer medical records review. She is a resident of King County,  
24 state of Washington.

26

**CLASS ACTION COMPLAINT - 4**

**KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK** Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1           2.2    Each of the Defendant USAA insurance companies is believed to be foreign  
2 insurance company, licensed to do and conducting business in the State of Washington and  
3 King County.

4           A.     The Defendants have Acted in Concert through a Joint Enterprise

5           2.3    At all times relevant, the Defendant USAA insurance companies have acted in  
6 concert as part of a "joint enterprise" with regard to the processing, review, adjustment and  
7 payment of PIP claims Washington.

8           2.4    As part of this joint enterprise, all the Defendant USAA insurance companies  
9 have processed, reviewed, adjusted and paid Washington insureds' PIP health care bills under  
10 the name "The USAA Group of Insurance Companies."

11          2.5    The USAA Group of Insurance Companies has used the same claims  
12 representatives to process, review, adjust and pay PIP health care charges submitted on all  
13 insurance policies issued by all of the Defendant USAA companies.

14          2.6    The claims representatives have followed the same procedures and practices  
15 when processing, reviewing, adjusting and paying insureds' PIP bills for services irrespective  
16 of which of the Defendant USAA companies was the insurer.

17          2.7    There is no difference between the Defendant companies in the way they  
18 process, review, adjust and pay claims under their insured's PIP coverage. They all use the  
19 same practices and procedures and the same claims representatives.

20          2.8    When processing, reviewing, adjusting and paying insured's health provider  
21 bills, the claims representatives were supervised by the same individuals and were subject to  
22 the same control over their work irrespective of which of the Defendant USAA companies was  
23 the insurer.

24          2.9    The policy language relied upon by the claims representative to pay Washington  
25 providers for their services under the insured's PIP coverage was identical or substantially  
26

**CLASS ACTION COMPLAINT - 5**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 similar irrespective of which of the Defendant USAA companies was the insurer. At all times  
2 relevant, each of the Defendant USAA companies have used substantially similar if not  
3 identical policy language for the PIP provision in their insurance policy relied upon by their  
4 claims representatives to pay Washington providers.

5 2.10 One purpose and intent of the joint enterprise between the Defendant USAA  
6 insurance companies was to reduce payments made in Washington for PIP medical expenses.

7 2.11 One purpose and intent of the joint enterprise between the Defendant USAA  
8 insurance companies was to reduce the cost of administrating and paying PIP claims.

9 2.12 The overall purpose and intent of the joint enterprise was to save the Defendant  
10 USAA insurance company costs and expenditures on PIP claims.

11 2.13 The effect of the joint enterprise was that each of the Defendant USAA  
12 insurance companies failed to pay all reasonable medical expenses of its insured under the  
13 insured's PIP coverage. Instead they engages in a systematic practice of unfairly depriving its  
14 injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by  
15 suspending medical payments until after completion of an "independent" medical exam (IME).

16 2.14 In practice, the same person or persons have the ability to change, amend, enact  
17 or alter the practices of the Defendant USAA insurance companies at issue in this action. These  
18 individuals have the ability to discontinue Defendants' unlawful practices.

19 2.15 Plaintiff was subjected to the above described practices of the Defendants' joint  
20 enterprise.

21 **III. JURISDICTION AND VENUE**

22 3.1 This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 4.28.185.

23 3.2 At all times relevant, Plaintiff resided in King County.

24

25

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**CLASS ACTION COMPLAINT - 6**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       3.3    At all times relevant, each of the Defendant USAA companies has conducted  
2 substantial business and many of the alleged breaches took place within King County,  
3 Washington.

4       3.4    Pursuant to RCW 4.12.025, venue is proper in King County Superior Court.

5                   IV.    FACTUAL ALLEGATIONS

6       A.    Plaintiffs' Individual Factual Allegations

7       4.1    Plaintiff re-alleges and incorporates the allegations set forth in paragraphs 1.1  
8 through 3.4 above, as if fully set forth in this paragraph.

9       4.2    Plaintiff was injured in an automobile accident on August 28, 2011. Plaintiff  
10 treated for injuries sustained in his automobile accident and submitted his medical bills to  
11 USAA for payment under her PIP coverage.

12       4.3    On March 15, 2012 USAA notified Plaintiff by letter that USAA is suspending  
13 payment of PIP coverage benefits and refusing to pay retroactively for treatment already  
14 provided, pending an IME.

15       As a result of injuries sustained in an automobile accident, Plaintiff has incurred  
16 reasonable and necessary medical bills which USAA has refused to pay and because of the  
17 suspension of payment Plaintiff is deterred from seeking additional necessary treatment.

18       4.4    The Putative Class incorporates herein by reference each and every allegation  
19 contained in paragraphs 1.1 to 4.4 above as if fully set forth here.

20                   V.    CLASS ALLEGATIONS

21       5.1    Plaintiff and the Putative class incorporate by reference each and every factual  
22 allegation set forth in paragraphs 1.1 to 4.4 herein by this reference as if set forth in its entirety.

23       5.2    Plaintiff brings all claims herein as class claims pursuant to Civil Rule  
24 ("CR") 23 and Local Rule ("LR") 23.

25

26

CLASS ACTION COMPLAINT - 7

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       5.3     The class consists of all insured, as defined in the Personal Injury Protection and  
2 MED PAY coverage portions of USAA's policies, and all third-party beneficiaries of such  
3 coverage, issued in the state of Washington with respect to whom USAA:(a) retroactively  
4 disallowed coverage for medical expenses more than thirty (30) days after Farmers received  
5 the bill for the insured's care, and (b) suspended and/or withheld payments for necessary  
6 treatment pending a future evaluation by USAA 's "independent" medical examiners. Excluded  
7 from the class are Farmers' executives, counsel, and their immediate family members. The time  
8 period for the class is six years preceding the date of filing of this lawsuit up to the date of  
9 settlement or judgment.

10       5.4     Plaintiff and the Class seek a declaratory judgment that USAA's practices were  
11 unfair, wrongful and/or deceptive and restitution and/or disgorgement, and/or damages and  
12 injunctive relief under the Declaratory Judgment Act, the common law, the Washington  
13 Insurance Code and the Washington Consumer Protection Act, RCW 19.86 et seq.

14       5.5     Class certification is proper under CR 23(a) (1) because the members of the  
15 class total more than 1,000 who are geographically dispersed over numerous cities and counties  
16 in the state of Washington.

17       5.6     Because of the number of Class members and their geographic dispersion,  
18 individual joinder of each putative class member is not practicable.

19       5.7     Class certification is proper under CR 23(a)(2) because USAA has undertaken  
20 common policies and practices with regard to suspension and retroactive denial of PIP  
21 payments. Among these common questions are:

22       a.       Whether USAA's retroactive denial of coverage for medical care, more than 30  
23 days after USAA received the bill for the injured person's care, constitute an illegal,  
24 unfair, or deceptive practice under Washington's insurance code and/or Consumer Protection  
25 Act?  
26

CLASS ACTION COMPLAINT - 8

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1                   b.     Whether USAA's retroactive denial of coverage for medical care, more than 30  
2 days after USAA received the bill for the injured person's care, breach Farmer's contractual  
3 duty of good faith and fair dealing?

4                   c.     Whether USAA's practice of suspending payments of insurance benefits before  
5 it has completed its investigation constitute a tortious and/or unfair claims- handling process?

6                   d.     Whether USAA's retroactive denial of coverage for medical care, more than 30  
7 days after USAA received the bill for the injured person's care, an illegal, unfair, or deceptive  
8 practice under Washington's insurance code and/or Consumer Protection Act?

9                   e.     Whether USAA's retroactive denial of coverage for medical care, more than 30  
10 days after USAA received the bill for the injured person's care, breach USAA's quasi-fiduciary  
11 duty to the class members?

12                  f.     Whether USAA engages in a systematic practice of unfairly depriving its  
13 injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by  
14 suspending medical payments until after completion of an (IME)?

15                  g.     Whether USAA delayed payment of PIP claims in violation of WAC  
16 §284.30.330 et seq?

17                  h.     Whether USAA was unjustly enriched by any of its unfair, wrongful and/or  
18 deceptive practices that violated the WAC, the Insurance Code, or the CPA.

19                5.7.    Class certification is proper under CR 23(a)(3) because Plaintiff's claims are  
20 typical of the claims of the members of the putative class and USAA's defenses to the claims  
21 of Plaintiff are also typical of the defenses to such claims. The claims and defenses are typical  
22 because they arise out of the same common policies and practices which USAA applied to the  
23 reimbursement of bills submitted by all Washington insureds' PIP coverage. The claims arise  
24 from the same unfair, wrongfully and deceptive scheme undertaken by Defendants to deprive  
25 Washington insureds of their full PIP coverage.

26.

CLASS ACTION COMPLAINT - 9

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax: (425) 893-8712  
Rob@kornfeldlaw.com

1       5.8     Class certification is proper under CR 23(a)(4) because Plaintiff can fairly and  
2 adequately represent the interests of the other members of the class. He has no interests that  
3 conflict with those of the members of the class. It is in his interest and those of the other  
4 members of the class that they be paid fully for their medical expenses. Plaintiff has retained  
5 skilled attorneys who have represented claimants and class members with similar claims to  
6 those brought in this lawsuit. Plaintiff' counsel have been appointed class counsel in other  
7 cases involving similar claims.

8       5.9     Class certification is proper under CR 23(b)(3) because the questions of law and  
9 fact common to the class, as set forth above in paragraph 5.6 predominate over any questions  
10 affecting only individual members of the class. Common questions predominate because  
11 USAA undertook a common course of conduct towards all members of the class regarding  
12 requests for reimbursement submitted under the insured's PIP coverage.

13       5.10    Class certification is proper under CR 23(b)(3) because a class action is a  
14 superior method for adjudicating the claims of the members of the class than hundreds of  
15 individual actions in numerous cities and counties of Washington that raise the identical factual  
16 and legal issues.

17       5.11    Class certification is a superior method of adjudicating the claims because the  
18 individual class members have little interest in individually controlling the prosecution of their  
19 claims.

20       5.12    Class certification is a superior method of adjudicating the claims because there  
21 is no significant individual litigation already commenced by Washington insureds against  
22 USAA raising the identical claims.

23       5.13    Class certification is a superior method of adjudicating the claims because it is  
24 desirable to concentrate the litigation and claims in a single forum to avoid duplicity of actions  
25 and inconsistent adjudications of identical claims. King County is a desirable forum for  
26

CLASS ACTION COMPLAINT - 10

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 litigation of the class claims because it is most likely the place where most class members are  
2 located and where the Defendants' in-state witnesses are likely located. The cost to the court  
3 system of individualized litigation would be substantial.

4 5.14 Class certification is a superior method of adjudicating the claims because there  
5 are few difficulties likely to be encountered in the adjudication of the class members' legal  
6 claims.

7 **VI. LEGAL CLAIMS AND CAUSES OF ACTION**

8 **COUNT I: DECLARATORY JUDGMENT ACT CLAIM**

9 6.1 Plaintiffs re-allege each and every allegation as set forth in paragraphs 1.1 to  
10 5.16 above as through set forth here.

11 6.2 Washington law requires all automobile insurers to provide PIP coverage that  
12 will pay all reasonable medical expenses of its insured arising from a covered automobile  
13 accident. RCW 48.22.005(7).

14 6.3 The Washington insurance code declares, *inter alia*, that "[t]he business of  
15 insurance...requir[es] that all persons be actuated by good faith, abstain from deception, and  
16 practice honesty and equity in all insurance matters." RCW 48.01.030. It also  
17 prohibits insurance companies from engaging in unfair or deceptive acts or practices in the  
18 conduct of their business. RCW 48.30.010. Specific acts that the Insurance Commissioner has  
19 defined to be unfair claims-handling practices in violation of the insurance code 30 WAC 284-  
20 30-330 include:

21 •Misrepresenting pertinent facts or insurance policy provisions.  
22 •Failing to acknowledge and act reasonably promptly upon communications with  
23 respect to claims arising under insurance policies.  
24 •Failing to adopt and implement reasonable standards for the prompt investigation of  
25 claims arising under insurance policies.

26 **CLASS ACTION COMPLAINT - 11**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1           •Failing to affirm or deny coverage of claims within a reasonable time after proof of  
2 loss statements have been completed.  
3           •Failing to promptly provide a reasonable explanation of the basis in the insurance  
4 policy in relation to the facts or applicable law for denial of a claim or for the offer of a  
5 compromise settlement  
6           •Failure to adopt and implement reasonable standards for the processing and payment  
7 of claims once the obligation to pay has been established.

8       6.4   Under Washington law, it is unlawful for an automobile insurer to deny a claim  
9 under the insurance policy without conducting a reasonable investigation of the claim. WAC  
10 §284-30-330.

11       6.5   Under Washington law, "[e]very insurer, upon receiving notification of claim,  
12 shall promptly provide necessary claim forms, instructions, and reasonable assistance so that  
13 first party claimants can comply with the policy conditions and the insurer's reasonable  
14 requirements." WAC 284-30-360.

15       6.6   Under Washington law, "[e]very insurer shall complete investigation of a claim  
16 within thirty days after notification of claim, unless such investigation cannot reasonably be  
17 completed within such time." WAC 284-30-370.

18       6.7   Under Washington law, [w]ithin fifteen working days after receipt by the  
19 insurer of properly executed proofs of loss, the first party claimant shall be advised of the  
20 acceptance or denial of the claim by the insurer." WAC 284-30-370.

21       6.8   The foregoing provisions of the insurance code can be enforced through the  
22 private right of action created by the state legislature in the Washington Consumer Protection  
23 Act: "actions and transactions prohibited or regulated under the laws administered by the  
24 insurance commissioner shall be subject to the provisions of RCW 19.86.020 and all sections  
25  
26

CLASS ACTION COMPLAINT - 12

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 393-8989 Fax (425) 393-8712  
Rob@kornfeldlaw.com

1 of chapter RCW 19.86 which provide for the implementation and enforcement of RCW  
2 19.86.020." RCW 19.86.170.

3 6.9 USAA's practice of unfairly depriving its injured insureds of their full PIP  
4 medical benefits by denying coverage retroactively and/or by suspending medical payments  
5 until after completion of an "independent" medical exam should be declared an unfair  
6 insurance practice because USAA fails to conduct a reasonable investigation of the claim  
7 before denying payment.

8 6.10 The Washington Insurance Code provides that: "No person engaged in the  
9 business of insurance shall engage in unfair or deceptive acts or practices in the conduct of  
10 such business." RCW 48.30.010(1).

11 6.11 The Washington Insurance Code provides in pertinent part: "No person shall  
12 disseminate any deceptive or misleading representation in the conduct of the business of  
13 insurance or relative to the business of insurance." RCW 48.30.040.

14 6.12 USAA's practice of unfairly depriving its injured insureds of their full PIP  
15 medical benefits by denying coverage retroactively and/or by suspending medical payments  
16 until after completion of an "independent" medical exam should be declared an unfair  
17 insurance practice because it is deceptive and misleading.

18 6.13 Each and every practice identified above should be declared an unfair and/or  
19 deceptive practice under the Insurance Code and the Consumer Protection Act.

20 **COUNT II: VIOLATION OF CONSUMER PROTECTION ACT**

21 6.14 Plaintiffs re-allege each and every allegation as set forth in paragraphs 1.1 to  
22 6.13 above as through set forth here.

23 6.15 The Washington Insurance Code prohibits the use of unfair or deceptive  
24 practices in the business of insurance. RCW 48.30.010(1). A violation of the Insurance Code  
25  
26

CLASS ACTION COMPLAINT - 13

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 constitutes a per se violation of Washington Consumer Protection Act, RCW 19.86 et. seq.  
2 [“CPA”].

3 6.16 Each and every practice identified in paragraphs 6.8 – 6.13 above is an unfair  
4 and/or deceptive practice that violates the CPA. Each of the practices is a per se violation of the  
5 CPA, because each violates the Insurance Code.

6 A. **USAA’s Unfair and Deceptive Practices in Violation of CPA AND IN BAD**  
7 **FAITH**

8 6.17 USAA has engaged in a systematic practice of reviewing medical claims of  
9 covered individuals many months after the individual received treatment and submitted the  
10 bills, and then retroactively denying coverage on the grounds that USAA, with the benefit of  
11 hindsight, believes that the care was not reasonable or necessary. USAA has repeatedly  
12 notified injured parties that coverage for continuing care is denied effective prior to the  
13 notification.

14 6.18 USAA has engaged in a widespread and systematic practice of suspending  
15 benefits until USAA can have its insureds see a biased, but ostensibly “independent,”  
16 medical examiner. That examiner, in turn, will routinely write a report resulting in further  
17 retroactive denial of benefits.

18 6.19 USAA does not provide timely notification to injured insureds that, in USAA’s  
19 opinion, their medical treatment is unnecessary and further claims will be denied. Instead, this  
20 notification routinely comes months after treatment was received. This practice causes accident  
21 victims to continue treating their injuries and incur substantial personal liability, despite their  
22 reasonable reliance that such treatments will be covered by the insurance that they dutifully  
23 paid for.

24 6.20 USAA’s practice also denies insureds and third-party beneficiaries the  
25 opportunity to have their treating physicians or other health care providers dispute USAA’s  
26

CLASS ACTION COMPLAINT - 14

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 "independent" conclusions on a timely basis (i.e., when treatment is actually being given, as  
2 opposed to months later). USAA's retroactive denial of coverage is not actuated by good faith  
3 and equity, as required by the insurance code. Furthermore, USAA's practice of suspending  
4 benefits before properly investigating the merits of the suspension violates USAA's obligation  
5 to adequately and properly investigate an insured's claim..

6 6.21 The abovementioned practices of USAA violate the Washington insurance  
7 code and insurance regulations and the Washington State Consumer Protection Act, and  
8 constitute a breach of: (a) USAA's statutory and contractual obligations of good faith and  
9 fair dealing; (b) USAA's quasi- contractual duties; and (c) USAA's duty to handle claims in  
10 a fair and reasonable manner.

11 6.22 Plaintiff and the class also allege that USAA owed and violated three  
12 fiduciary duties: (1) the duty to disclose all facts that would aid its insureds in protecting  
13 their interests; (2) the duty of equal consideration; and (3) the duty not to mislead its insureds.  
14 USAA's failure to pay medical care already incurred also represents a violation of WAC  
15 284.30.395.

16 6.23 Plaintiff and the Class also suffered an injury to their property and/or business  
17 caused by USAA's unfair and deceptive practices by having to expend out of pocket expenses  
18 in relation to the payment of their medical bills.

19 6.24 USAA routinely and systematically underpaid Plaintiff and the Class and as a  
20 direct and proximate result of USAA's unfair and deceptive practices described above, Plaintiff  
21 and the Class suffered injuries to their property and/or business and damages in amounts to be  
22 proven at the time of trial.

23 6.25 Plaintiff and the Class would have acted differently had USAA not engaged in  
24 the unfair and deceptive acts described above and they would have received additional  
25 necessary medical care and treatment had their coverage not been denied.

26 CLASS ACTION COMPLAINT - 15:

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       6.26 Plaintiff and the Class would have acted differently had USAA disclosed all  
2 material facts concerning its duties under the policy and under Washington law.

3       6.27 But for USAA's unfair and deceptive conduct as alleged above, Plaintiff and the  
4 Class would not have suffered injury or damage.

5       6.28 USAA is liable to Plaintiff and the Class for statutory, actual and treble  
6 damages, prejudgment interest, attorneys' fees and costs and injunctive relief under the CPA.

7                   **COUNT III: BREACH OF CONTRACT**

8       6.29 Plaintiff and the Class incorporate each and every allegations made in  
9 paragraphs 1.1- 6.28 above as though fully set forth herein.

10       6.30 USAA, by its acts and omissions described in this complaint, breached and  
11 continues to breach its duties of good faith and fair dealing and its "enhanced obligation of  
12 fairness towards its insured," which are all implicit in USAA's insurance contracts. *Safeco*  
13 *Ins. Co. of Amer. v. Butler.*

14       6.31 USAA's specific breaches include, but are not limited to (a) refusing to pay  
15 the amount of medical benefits it is contractually obligated to pay, and (b) failing to meet  
16 its duties of good faith and fair dealing by retroactively denying medical coverage months  
17 after receiving notice of an insured's treatment and/or suspending coverage pending an  
18 examination by one of its "independent" examiners. .

19       6.32 Plaintiff and the proposed class have been damaged by USAA's breaches,  
20 while USAA has unreasonably profited from them.

21       6.33 Plaintiff and the proposed class are entitled to declaratory and injunctive relief  
22 prohibiting USAA from engaging in the breaches alleged in this complaint.

23       6.34 They are also entitled to damages in an amount to be proven at trial,  
24 together with prejudgment interest, expenses, and costs.

25  
26

**CLASS ACTION COMPLAINT - 16**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 6.35 Plaintiff and the Class performed all of the terms of the contract, when they  
2 submitted their bills for payment to USAA rather than the insured.

3           6.36 USAA breached the contract by not paying the Plaintiff's and Class member's  
4 bill in full but instead reducing the payment based on due to code 41.explanation and/or what it  
5 assumed was the 90<sup>th</sup> percentile of provider charges in the provider's geographic area.

## VII. DAMAGES

7           7.1 Plaintiff and the Class incorporate each and every allegation made in paragraphs  
8 1.1 - 6.67 above as though fully set forth herein.

9        7.2      As a direct and proximate result of USAA's wrongful conduct and breach of  
10 contract, described above, the Plaintiff and the Class sustained injury to their property and  
11 business and damages in amount that will be established at trial, but which amount is  
12 substantially less than \$5,000,000.

13        7.3      The injury and damages include but is not limited to loss of money from under-  
14 payment of their bills, delayed payment of their bills and breach of contract, nominal and  
15 exemplary damages, and out-of-pocket expenses.

16 7.4 There is no reasonable basis to believe that these damages exceed \$5,000,000.

## VII. PRAYER FOR RELIEF

19 WHEREFORE, Plaintiffs and the Class respectfully pray that this Court enter judgment  
on each cause of action alleged herein in favor of Plaintiff and the Class and against all  
20 Defendants and that it award damages, equitable and injunctive relief enjoining Defendants  
21 from the actions alleged herein and that the Court grant such additional relief as follows:

23 7.1 Certification of this action as a Class Action pursuant to CR 23.  
24 7.2 Award actual damages to be established at trial;  
25 7.3 Award statutory damages;  
7.4 Award reasonable attorney's fees and costs as provided by law;

**CLASS ACTION COMPLAINT - 17**

**KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK** Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

6.37 Enter a Declaratory Judgment that Defendants' acts described above, and as  
established at trial, are unfair and deceptive acts that violate the Washington Insurance Code  
and Washington Administrative Code, and that Defendants are required to pay all reasonable  
and necessary medical expenses of the Plaintiff until such time as there is an independent  
determination that they are not reasonable and necessary or the PIP policy limits have been  
met..

7           7.5.   Enjoin defendants from continued violation of the Washington Consumer  
8           Protection Act, RCW 19.86.010 *et seq.*;

9           7.6     Finding that USAA's actions constitute violation of the Washington Consumer  
10         Protection Act, RCW 19.86.010 *et seq.*

11 7.7 Award Plaintiff and the Class restitution, disgorgement, declaratory relief,  
12 and/or actual damages for USAA's unfair, wrongful and/or deceptive acts and conduct;

## 13 7.8 Award plaintiffs and the Class prejudgment interest;

14 7.9 Award plaintiffs and Class treble, exemplary and/or punitive damages up to the  
15 maximum amount permitted by Washington law;

16 7.10 Award plaintiffs and the Class, expert fees, disbursements and costs of suit;

17. 7.11 Award such other relief as the court deems equitable, appropriate or just.

18 Dated: April 11, 2012

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK, PLLC

By

Robert B. Kornfeld, WSBA #10669  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

**CLASS ACTION COMPLAINT - 18**

**KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK** Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 HOUCK LAW FIRM, PS  
2 By:   
3 William Houck, WSBA #13324  
4 4045 262<sup>nd</sup> AVE. SE  
5 Issaquah, WA 98029  
6 (425) 392-7118 Fax (425) 337-0916  
7 houcklaw@gmail.com  
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CLASS ACTION COMPLAINT - 19

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

OFFICE OF  
INSURANCE COMMISSIONER  
P.O. BOX 40255  
OLYMPIA, WA 98504-0255  
© 2012



91 7199 9991 7030 0873 4976

USAA GENERAL INDEMNITY COMPANY  
CT CORPORATION SYSTEM  
1801 WEST BAY DR NW STE 206  
OLYMPIA WA 98502

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

TARA COTE, individually and on behalf of the )  
class of similarly situated persons and entities, )  
Plaintiffs, ) NO. 12-2-12637-2 KNT  
vs. ) INSURANCE COMMISSIONER'S  
 ) CERTIFICATE OF SERVICE  
UNITED SERVICE AUTOMOBILE )  
ASSOCIATION, a foreign corporation, USAA )  
GENERAL AGENCY, INC., a foreign )  
corporation, USAA INSURANCE AGENCY, a )  
foreign corporation, USAA CASUALTY )  
INSURANCE COMPANY, a foreign )  
corporation, USAA GENERAL INDEMNITY )  
COMPANY, a foreign corporation, )  
Defendants. )

---

THIS IS TO CERTIFY that the Insurance Commissioner of the State of Washington has accepted service of

*SUMMONS; COMPLAINT; ORDER SETTING CASE SCHEDULE*

in the above-mentioned matter on April 25, 2012, on behalf of and as statutory attorney for

*USAA INSURANCE AGENCY INC.*

an authorized foreign or alien insurer, and has forwarded a duplicate copy thereof to said insurance company pursuant to RCW 48.02.200 and 48.05.200.

Receipt of the \$10 statutory service fee is acknowledged.

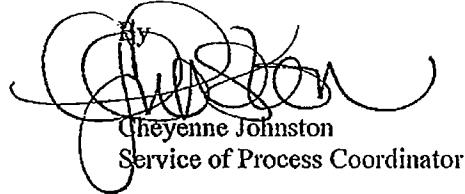
ISSUED AT OLYMPIA, WASHINGTON: April 26, 2012

Method Rec'd by: US Mail  
Date: 5-2-12

Del'd to: LINDA ALLEN  
Dept: CLO Admin  
Date: MAY 02 2012  
Tracker ID: 8489

Certification No.: 91 7199 9991 7030 0873 4624

**MIKE KREIDLER**  
Insurance Commissioner



My  
Signature  
Cheyenne Johnston  
Service of Process Coordinator

**Original to:**

Robert B. Kornfield  
Kornfield Trudell Bowen & Lingenbrink, PLLC  
3724 Lake Washington Blvd NE  
Kirkland, WA 98033

**Copy to:**

USAA Insurance Agency Inc.  
Rick Grewe  
9800 Fredericksberg Rd.  
San Antonio, TX 78288

Tracker ID 8489



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

TARA COTE	Plaintiff(s)	NO. 12-2-12637-2 KNT
vs		Order Setting Civil Case Schedule (*ORSCS)
USAA		ASSIGNED JUDGE Gain 14
		FILE DATE: 04/12/2012
	Defendant(s)	TRIAL DATE: 09/09/2013

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

**I. NOTICES**

**NOTICE TO PLAINTIFF:** The Plaintiff may serve a copy of this Order Setting Case Schedule (*Schedule*) on the Defendant(s) along with the *Summons and Complaint/Petition*. Otherwise, the Plaintiff shall serve the *Schedule* on the Defendant(s) within 10 days after the later of: (1) the filing of the *Summons and Complaint/Petition* or (2) service of the Defendant's first response to the *Complaint/Petition*, whether that response is a *Notice of Appearance*, a response, or a Civil Rule 12 (CR 12) motion. The *Schedule* may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

*"I understand that I am required to give a copy of these documents to all parties in this case."*

Print Name

Sign Name

## I. NOTICES (continued)

### NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] -- especially those referred to in this *Schedule*. In order to comply with the *Schedule*, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLR 26], and for meeting the discovery cutoff date [See KCLR 37(g)].

### CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$230 must be paid when any answer that includes additional claims is filed in an existing case.

### KCLR 4.2(a)(2)

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

### PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

### NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

*All parties to this action must keep the court informed of their addresses.* When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

### ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule if the case is subject to mandatory arbitration and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. Any party filing a Statement must pay a \$220 arbitration fee. If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

### NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

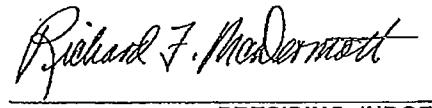
King County Local Rules are available for viewing at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).

## II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Thu 04/12/2012	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. <u>\$220 arbitration fee must be paid</u>	Thu 09/20/2012	*
DEADLINE to file Confirmation of Joinder if not subject to Arbitration. [See KCLCR 4.2(a) and Notices on Page 2].	Thu 09/20/2012	*
DEADLINE for Hearing Motions to Change Case Assignment Area. [See KCLCR 82(e)].	Thu 10/04/2012	
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLCR 26(b)].	Mon 04/08/2013	
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLCR 26(b)].	Mon 05/20/2013	
DEADLINE for Jury Demand [See KCLCR 38(b)(2)].	Mon 06/03/2013	*
DEADLINE for Setting Motion for a Change in Trial Date [See KCLCR 40(e)(2)].	Mon 06/03/2013	*
DEADLINE for Discovery Cutoff [See KCLCR 37(g)].	Mon 07/22/2013	
DEADLINE for Engaging in Alternative Dispute Resolution [See KCLCR 16(b)].	Mon 08/12/2013	
DEADLINE for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLCR 4(j)].	Mon 08/19/2013	
DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16(a)(2)].	Mon 08/19/2013	*
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56; CR 56].	Mon 08/26/2013	
Joint Statement of Evidence [See KCLCR (4)(k)].	Tue 09/03/2013	*
DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file Proposed Findings of Fact and Conclusions of Law with the Clerk)	Tue 09/03/2013	*
Trial Date [See KCLCR 40].	Mon 09/09/2013	

## III. ORDER

Pursuant to King County Local Civil Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Civil Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 04/12/2012


PRESIDING JUDGE

#### **IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE**

##### **READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE**

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

**COMPLEX LITIGATION:** If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

**APPLICABLE RULES:** Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx> .

##### **CASE SCHEDULE AND REQUIREMENTS**

Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

##### **THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.**

###### **A. Joint Confirmation regarding Trial Readiness Report:**

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report settling forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment, etc.).

The form is available at <http://www.kingcounty.gov/courts/superiorcourt.aspx> . If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding said report.

###### **B. Settlement/Mediation/ADR**

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.

**C. Trial:** Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website <http://www.kingcounty.gov/courts/superiorcourt.aspx> to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

#### **MOTIONS PROCEDURES**

##### **A. Noting of Motions**

**Dispositive Motions:** All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx> .

**Nondispositive Motions:** These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Motions In Family Law Cases not involving children:** Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Emergency Motions:** Under the court's local civil rules, emergency motions will be allowed only upon entry of an Order Shortening Time. However, emergency discovery disputes may be addressed by telephone call and without written motion, if the judge approves.

#### **B. Original Documents/Working Copies/ Filing of Documents**

**All original documents must be filed with the Clerk's Office.** Please see information on the Clerk's Office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding the new requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. On June 1, 2009 you will be able to submit working copies through the Clerk's office E-Filing application at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).

**Service of documents.** E-filed documents may be electronically served on parties who opt in to E-Service within the E-Filing application. The filer must still serve any others who are entitled to service but who have not opted in. E-Service generates a record of service document that can be e-filed. Please see information on the Clerk's office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding E-Service.

**Original Proposed Order:** Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. Do not file the original of the proposed order with the Clerk of the Court. Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order.

**Presentation of Orders:** All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. If final order and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.

**C. Form**

Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

**IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.**



---

PRESIDING JUDGE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

TARA COTE, individually and on behalf of the class of similarly situated persons and entities,

Plaintiffs,

Cause No.: 12-2-12637-2 KNT

## SUMMONS

6 UNITED SERVICE AUTOMOBILE  
7 ASSOCIATION, a foreign corporation, USAA  
8 GENERAL AGENCY, INC., a foreign  
corporation, USAA INSURANCE AGENCY, a  
9 foreign corporation, USAA CASUALTY  
INSURANCE COMPANY, a foreign  
10 corporation, USAA GENERAL INDEMNITY  
COMPANY, a foreign corporation,

### Defendants.

TO THE DEFENDANTS:

A lawsuit has been started against you in the above-entitled court by plaintiff.

15 Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this  
16 summons.

17 In order to defend against this lawsuit, you must respond to the complaint by stating  
18 your defense in writing, and by serving a copy upon the person signing this summons within  
19 twenty (20) days after service of this summons, excluding the day of service, or

22 | SUMMONS - 1

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 891-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 within sixty (60) days of service if made upon you outside the State of Washington, or a default  
2 judgment may be entered against you without notice. A default judgment is one where plaintiff  
3 is entitled to what he asks for because you have not responded. If you serve a notice of  
4 appearance on the undersigned person, you are entitled to notice before a default judgment may  
5 be entered.

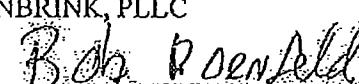
6 You may demand that the plaintiff file this lawsuit with the court. If you do so, the  
7 demand must be in writing and must be served upon the person signing this summons. Within  
8 fourteen (14) days after you serve the demand, the plaintiff must file this lawsuit with the court,  
9 or the service on you of this summons and complaint will be void.

10  
11 If you wish to seek advice of an attorney in this matter, you should do so promptly so  
12 that your written response, if any, may be served on time.

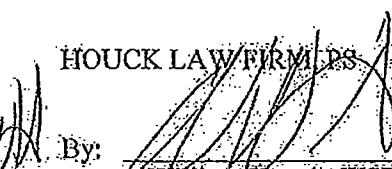
13 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the  
14 State of Washington.

15 Dated: April 11, 2012

16  
17 KORNFIELD, TRUDELL, BOWEN &  
18 LINGENBRINK, PLLC

19 By:   
20 Robert B. Kornfeld, WSBA #10669  
21 3724 Lake Washington Blvd NE  
22 Kirkland, Washington 98033  
23 (425) 893-8989 Fax (425) 893-8712  
24 Rob@kornfeldlaw.com

25 HOUCK LAW FIRM PLLC

26 By:   
27 William Houck, WSBA #13324  
28 4045 262<sup>nd</sup> AVE. SE  
29 Issaquah, WA 98029  
30 (425) 392-7118 ax (425) 337-0916  
31 [houcklaw@gmail.com](mailto:houcklaw@gmail.com)

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

10 TARA COTE, individually and on behalf of the  
class of similarly situated persons and entities,

Cause No.: 12-2-12637-2 KNT

Plaintiffs,  
vs.

## CLASS ACTION

13 UNITED SERVICE AUTOMOBILE  
14 ASSOCIATION, a foreign corporation, USAA  
15 GENERAL AGENCY, INC., a foreign  
16 corporation, USAA INSURANCE AGENCY, a  
17 foreign corporation, USAA CASUALTY  
18 INSURANCE COMPANY, a foreign  
19 corporation, USAA GENERAL INDEMNITY  
20 COMPANY, a foreign corporation,

COMPLAINT FOR DECLARATORY  
JUDGMENT, VIOLATION OF RCW §§  
19.86, UNJUST ENRICHMENT and  
BREACH OF CONTRACT CLAIM

**DEMAND FOR JURY TRIAL**

**Defendants.**

20 Plaintiff, Tara Cote, [hereinafter, "Cote" or "Plaintiff"] individually and on behalf of all  
21 members of the Class of similarly situated Washington insureds alleges the following  
22 Complaint and causes of action against Defendants United Services Automobile Association,  
23 USAA General Agency, Inc., USAA Insurance Agency, USAA Casualty Insurance Company,  
and USAA General Indemnity Company (hereinafter "");

**CLASS ACTION COMPLAINT - 1**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

## I. PRELIMINARY STATEMENT

**A. Defendant USAA Provides PIP/MED PAY Coverage in Washington**

1.1 At all time relevant, each of the Defendant USAA insurance companies has sold automobile insurance in Washington. USAA, as an automobile insurers in Washington, is required by law to provide "Personal Injury Protection" or "PIP" and/or MED PAY coverage in their automobile insurance policies that would pay each insured's "reasonable and necessary" medical and hospital benefits" up to \$10,000 arising from a covered automobile accident.

8        1.2    Defendant USAA engages in a systematic practice of unfairly depriving its  
9    injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by  
10   suspending medical payments until after completion of an “independent” medical exam (IME)  
11   or a records review or a peer review. These “retroactive denials” of coverage occur days,  
12   weeks or months after the claimants have received treatment for their injuries and amount to  
13   a failure to pay claims that have already occurred. The “suspensions of medical payments”  
14   unfairly deny and suspend medical coverage until the completion of the IME or some other  
15   review. These unfair practices can spell financial ruin for insureds, who are receiving necessary  
16   care for their injuries but are unable to reasonably rely upon their PIP insurance coverage to  
17   pay for their treatment, and can cause a loss of health care which can make their injuries and  
18   conditions worse, thereby, increasing pain and suffering. Neither the contract of insurance nor  
19   USAA’s claims department give notice to the insureds that USAA routinely denies coverage  
20   retroactively or suspends coverage for day, weeks or months on end.

21           1.3     With respect to “retroactive denial of coverage”, USAA fails to maintain a  
22 consistent, timely, and fair process for pre-treatment authorization or for contemporaneous  
23 authorization, nor does it give notice of this practice, a practice which is in bad faith and denial  
24 of PIP and MED PAY benefits. Instead, days, weeks or months after treatment has taken place,  
25 USAA unilaterally, without foundation or medical evidence, denies further and past care and

**CLASS ACTION COMPLAINT - 2**

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 treatment. USAA utilizes "independent" medical examiners or other reviews by health care  
2 providers, who may or may not be qualified, to conduct a medical review of the insured. These  
3 examiners are paid exclusively by USAA to make a determination as to whether that treatment  
4 was "reasonable and necessary" or caused by the collision at issue. When coverage is denied,  
5 the denial is retroactive such that the insured party is neither notified nor aware that the  
6 treatment will not be covered until long after treatment has actually occurred. With respect to  
7 "suspension of coverage", USAA denies and suspends coverage before there is a determination  
8 that the treatments are not reasonable and necessary or there is a causation issue.

9       1.4     At all times relevant, USAA's automobile insurance policies in Washington  
10 have not stated that payment of medical and hospital benefits under the PIP and MED PAY  
11 coverage is subject to retroactive denial of coverage or suspension pending an "independent"  
12 medical examination, records review or peer review (hereafter referred to collectively as an  
13 IME) or that this can be accomplished on the whim of an insurance adjuster without any  
14 medical evidence and without the proper foundation and authority to support such a unilateral  
15 decision.

16       1.5     USAA is obligated contractually and under Washington Insurance law to  
17 process PIP claims in a fair and timely manner and to comply with the WAC governing  
18 Insurance Practices. USAA is required to rely on the facts as they appear at the time the  
19 treatment is given as opposed to the opinions of its potentially biased medical  
20 examiners days, weeks or months after the date of treatment.

21       1.6     USAA is prohibited from retroactively denying coverage and/or  
22 unilaterally deciding to suspend payments until an examination can take place.

23       1.7     USAA wrongful conduct violates the Washington State Insurance Code  
24 and the Washington State Consumer Protection Act, and violates USAA's statutory and  
25 contractual duties of good faith and fair dealing and duty to handle claims in a fair and  
26

CLASS ACTION COMPLAINT - 3

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 reasonable manner. USAA has been "guilty" of bad faith in the payment of MED PAY  
2 and PIP benefits in these regards.

3        1.8    USAA's conduct violated its fiduciary duties to its insureds: (1) the duty  
4 to conduct a reasonable investigation before denying or suspending coverage (2) the  
5 duty to disclose all facts that would aid its insureds in protecting their interests;  
6 (3) the duty of equal consideration; (4) the duty not to mislead its insureds and the  
7 duty to follow the Washington State Insurance regulations.

8           1.9 Plaintiff, on behalf of himself and others similarly situated, seeks damages for  
9 USAA's illegal practices and seeks declaratory and injunctive relief compelling USAA to  
10 adopt fair and equitable claims-handling procedures regarding the issues raised in this action.

11 | C. The “USAA Group of Insurance Companies” Acts for USAA

12        1.10 At all times relevant, the Defendant USAA companies have processed,  
13 reviewed, adjust and/or paid Washington insured's PIP and MED PAY coverage using the  
14 name, "The USAA Group of Insurance Companies." The name "The USAA Group of  
15 Insurance Companies" has referred to all of the Defendant USAA insurance companies over  
16 the relevant time period.

17        1.11 At all times relevant, the Defendant USAA companies have communicated to  
18 Washington insureds what actions they have taken on bills submitted by them for medical  
19 expenses under the PIP and MED APY coverage through EOB forms that bear the name "The  
20 USAA Group of Insurance Companies".

## II. PARTIES

22           2.1       Tara Cote is a USAA insured who had his PIP benefits retroactively denied and  
23 suspended pending USAA's peer medical records review. She is a resident of King County,  
24 state of Washington.

26

**CLASS ACTION COMPLAINT - 4**

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       2.2    Each of the Defendant USAA insurance companies is believed to be foreign  
2 insurance company, licensed to do and conducting business in the State of Washington and  
3 King County.

4       A.     The Defendants have Acted in Concert through a Joint Enterprise

5       2.3    At all times relevant, the Defendant USAA insurance companies have acted in  
6 concert as part of a "joint enterprise" with regard to the processing, review, adjustment and  
7 payment of PIP claims Washington.

8       2.4    As part of this joint enterprise, all the Defendant USAA insurance companies  
9 have processed, reviewed, adjusted and paid Washington insureds' PIP health care bills under  
10 the name "The USAA Group of Insurance Companies."

11       2.5    The USAA Group of Insurance Companies has used the same claims  
12 representatives to process, review, adjust and pay PIP health care charges submitted on all  
13 insurance policies issued by all of the Defendant USAA companies.

14       2.6    The claims representatives have followed the same procedures and practices  
15 when processing, reviewing, adjusting and paying insureds' PIP bills for services irrespective  
16 of which of the Defendant USAA companies was the insurer.

17       2.7    There is no difference between the Defendant companies in the way they  
18 process, review, adjust and pay claims under their insured's PIP coverage. They all use the  
19 same practices and procedures and the same claims representatives.

20       2.8    When processing, reviewing, adjusting and paying insured's health provider  
21 bills, the claims representatives were supervised by the same individuals and were subject to  
22 the same control over their work irrespective of which of the Defendant USAA companies was  
23 the insurer.

24       2.9    The policy language relied upon by the claims representative to pay Washington  
25 providers for their services under the insured's PIP coverage was identical or substantially

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CLASS ACTION COMPLAINT - 5

KORNFELD, TRUDELL, BOWEN &  
JINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 similar irrespective of which of the Defendant USAA companies was the insurer. At all times  
2 relevant, each of the Defendant USAA companies have used substantially similar if not  
3 identical policy language for the PIP provision in their insurance policy relied upon by their  
4 claims representatives to pay Washington providers.

5 2.10 One purpose and intent of the joint enterprise between the Defendant USAA  
6 insurance companies was to reduce payments made in Washington for PIP medical expenses.

7 2.11 One purpose and intent of the joint enterprise between the Defendant USAA  
8 insurance companies was to reduce the cost of administrating and paying PIP claims.

9 2.12 The overall purpose and intent of the joint enterprise was to save the Defendant  
10 USAA insurance company costs and expenditures on PIP claims.

11 2.13 The effect of the joint enterprise was that each of the Defendant USAA  
12 insurance companies failed to pay all reasonable medical expenses of its insured under the  
13 insured's PIP coverage. Instead they engages in a systematic practice of unfairly depriving its  
14 injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by  
15 suspending medical payments until after completion of an "independent" medical exam (IME).

16 2.14 In practice, the same person or persons have the ability to change, amend, enact  
17 or alter the practices of the Defendant USAA insurance companies at issue in this action. These  
18 individuals have the ability to discontinue Defendants' unlawful practices.

19 2.15 Plaintiff was subjected to the above described practices of the Defendants' joint  
20 enterprise.

21 **III. JURISDICTION AND VENUE**

22 3.1 This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 4.28.185.

23 3.2 At all times relevant, Plaintiff resided in King County.

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CLASS ACTION COMPLAINT - 6

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       3.3    At all times relevant, each of the Defendant USAA companies has conducted  
2 substantial business and many of the alleged breaches took place within King County,  
3 Washington.

4       3.4    Pursuant to RCW 4.12.025, venue is proper in King County Superior Court.

5                   IV.    FACTUAL ALLEGATIONS

6                   A.    Plaintiffs' Individual Factual Allegations

7       4.1    Plaintiff re-alleges and incorporates the allegations set forth in paragraphs 1.1  
8 through 3.4 above, as if fully set forth in this paragraph.

9       4.2    Plaintiff was injured in an automobile accident on August 28, 2011. Plaintiff  
10 treated for injuries sustained in his automobile accident and submitted his medical bills to  
11 USAA for payment under her PIP coverage.

12       4.3    On March 15, 2012 USAA notified Plaintiff by letter that USAA is suspending  
13 payment of PIP coverage benefits and refusing to pay retroactively for treatment already  
14 provided, pending an IME.

15               As a result of injuries sustained in an automobile accident, Plaintiff has incurred  
16 reasonable and necessary medical bills which USAA has refused to pay and because of the  
17 suspension of payment Plaintiff is deterred from seeking additional necessary treatment.

18       4.4    The Putative Class incorporates herein by reference each and every allegation  
19 contained in paragraphs 1.1 to 4.4 above as if fully set forth here.

20                   V.    CLASS ALLEGATIONS

21       5.1    Plaintiff and the Putative class incorporate by reference each and every factual  
22 allegation set forth in paragraphs 1.1 to 4.4 herein by this reference as if set forth in its entirety.

23       5.2    Plaintiff brings all claims herein as class claims pursuant to Civil Rule  
24 ("CR") 23 and Local Rule ("LR") 23.

25  
26  
CLASS ACTION COMPLAINT - 7

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       5.3     The class consists of all insured, as defined in the Personal Injury Protection and  
2 MED PAY coverage portions of USAA's policies, and all third-party beneficiaries of such  
3 coverage, issued in the state of Washington with respect to whom USAA:(a) retroactively  
4 disallowed coverage for medical expenses more than thirty (30) days after Farmers received  
5 the bill for the insured's care, and (b) suspended and/or withheld payments for necessary  
6 treatment pending a future evaluation by USAA's "independent" medical examiners. Excluded  
7 from the class are Farmers' executives, counsel, and their immediate family members. The time  
8 period for the class is six years preceding the date of filing of this lawsuit up to the date of  
9 settlement or judgment.

10       5.4     Plaintiff and the Class seek a declaratory judgment that USAA's practices were  
11 unfair, wrongful and/or deceptive and restitution and/or disgorgement, and/or damages and  
12 injunctive relief under the Declaratory Judgment Act, the common law, the Washington  
13 Insurance Code and the Washington Consumer Protection Act, RCW 19.86 et seq.

14       5.5     Class certification is proper under CR 23(a) (1) because the members of the  
15 class total more than 1,000 who are geographically dispersed over numerous cities and counties  
16 in the state of Washington.

17       5.6     Because of the number of Class members and their geographic dispersion,  
18 individual joinder of each putative class member is not practicable.

19       5.7     Class certification is proper under CR 23(a)(2) because USAA has undertaken  
20 common policies and practices with regard to suspension and retroactive denial of PIP  
21 payments. Among these common questions are:

22       a.       Whether USAA's retroactive denial of coverage for medical care, more than 30  
23 days after USAA received the bill for the injured person's care, constitute an illegal,  
24 unfair, or deceptive practice under Washington's insurance code and/or Consumer Protection  
25 Act?

26       CLASS ACTION COMPLAINT - 8

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1                   b.     Whether USAA's retroactive denial of coverage for medical care, more than 30  
2 days after USAA received the bill for the injured person's care, breach Farmer's contractual  
3 duty of good faith and fair dealing?

4                   c.     Whether USAA's practice of suspending payments of insurance benefits before  
5 it has completed its investigation constitute a tortious and/or unfair claims- handling process?

6                   d.     Whether USAA's retroactive denial of coverage for medical care, more than 30  
7 days after USAA received the bill for the injured person's care, an illegal, unfair, or deceptive  
8 practice under Washington's insurance code and/or Consumer Protection Act?

9                   e.     Whether USAA's retroactive denial of coverage for medical care, more than 30  
10 days after USAA received the bill for the injured person's care, breach USAA's quasi-fiduciary  
11 duty to the class members?

12                  f.     Whether USAA engages in a systematic practice of unfairly depriving its  
13 injured insureds of their full PIP medical benefits by denying coverage retroactively and/or by  
14 suspending medical payments until after completion of an (IME)?

15                  g.     Whether USAA delayed payment of PIP claims in violation of WAC  
16 §284.30.330 et seq?

17                  h.     Whether USAA was unjustly enriched by any of its unfair, wrongful and/or  
18 deceptive practices that violated the WAC, the Insurance Code, or the CPA.

19                5.7.    Class certification is proper under CR 23(a)(3) because Plaintiff' claims are  
20 typical of the claims of the members of the putative class and USAA's defenses to the claims  
21 of Plaintiff are also typical of the defenses to such claims. The claims and defenses are typical  
22 because they arise out of the same common policies and practices which USAA applied to the  
23 reimbursement of bills submitted by all Washington insureds' PIP coverage. The claims arise  
24 from the same unfair, wrongfully and deceptive scheme undertaken by Defendants to deprive  
25 Washington insureds of their full PIP coverage.

26

CLASS ACTION COMPLAINT - 9

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1       5.8    Class certification is proper under CR 23(a)(4) because Plaintiff can fairly and  
2 adequately represent the interests of the other members of the class. He has no interests that  
3 conflict with those of the members of the class. It is in his interest and those of the other  
4 members of the class that they be paid fully for their medical expenses. Plaintiff has retained  
5 skilled attorneys who have represented claimants and class members with similar claims to  
6 those brought in this lawsuit. Plaintiff's counsel have been appointed class counsel in other  
7 cases involving similar claims.

8       5.9    Class certification is proper under CR 23(b)(3) because the questions of law and  
9 fact common to the class, as set forth above in paragraph 5.6 predominate over any questions  
10 affecting only individual members of the class. Common questions predominate because  
11 USAA undertook a common course of conduct towards all members of the class regarding  
12 requests for reimbursement submitted under the insured's PIP coverage.

13       5.10   Class certification is proper under CR 23(b)(3) because a class action is a  
14 superior method for adjudicating the claims of the members of the class than hundreds of  
15 individual actions in numerous cities and counties of Washington that raise the identical factual  
16 and legal issues.

17       5.11   Class certification is a superior method of adjudicating the claims because the  
18 individual class members have little interest in individually controlling the prosecution of their  
19 claims.

20       5.12   Class certification is a superior method of adjudicating the claims because there  
21 is no significant individual litigation already commenced by Washington insureds against  
22 USAA raising the identical claims.

23       5.13   Class certification is a superior method of adjudicating the claims because it is  
24 desirable to concentrate the litigation and claims in a single forum to avoid duplicity of actions  
25 and inconsistent adjudications of identical claims. King County is a desirable forum for  
26

CLASS ACTION COMPLAINT - 10

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 litigation of the class claims because it is most likely the place where most class members are  
2 located and where the Defendants' in-state witnesses are likely located. The cost to the court  
3 system of individualized litigation would be substantial.

4 5.14 Class certification is a superior method of adjudicating the claims because there  
5 are few difficulties likely to be encountered in the adjudication of the class members' legal  
6 claims.

7 **VI. LEGAL CLAIMS AND CAUSES OF ACTION**

8 **COUNT I: DECLARATORY JUDGMENT ACT CLAIM**

9 6.1 Plaintiffs re-allege each and every allegation as set forth in paragraphs 1.1 to  
10 5.16 above as through set forth here.

11 6.2 Washington law requires all automobile insurers to provide PIP coverage that  
12 will pay all reasonable medical expenses of its insured arising from a covered automobile  
13 accident. RCW 48.22.005(7).

14 6.3 The Washington insurance code declares, *inter alia*, that "[t]he business of  
15 insurance...requir[es] that all persons be actuated by good faith, abstain from deception, and  
16 practice honesty and equity in all insurance matters." RCW 48.01.030. It also  
17 prohibits insurance companies from engaging in unfair or deceptive acts or practices in the  
18 conduct of their business. RCW 48.30.010. Specific acts that the Insurance Commissioner has  
19 defined to be unfair claims-handling practices in violation of the insurance code 30 WAC 284-  
20 30-330 include:

21 • Misrepresenting pertinent facts or insurance policy provisions.  
22 • Failing to acknowledge and act reasonably promptly upon communications with  
23 respect to claims arising under insurance policies.  
24 • Failing to adopt and implement reasonable standards for the prompt investigation of  
25 claims arising under insurance policies.

26 CLASS ACTION COMPLAINT - 11

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

- 1       •Failing to affirm or deny coverage of claims within a reasonable time after proof of
- 2       loss statements have been completed.
- 3       •Failing to promptly provide a reasonable explanation of the basis in the insurance
- 4       policy in relation to the facts or applicable law for denial of a claim or for the offer of a
- 5       compromise settlement
- 6       •Failure to adopt and implement reasonable standards for the processing and payment
- 7       of claims once the obligation to pay has been established.

8       6.4      Under Washington law, it is unlawful for an automobile insurer to deny a claim  
9       under the insurance policy without conducting a reasonable investigation of the claim. WAC  
10      §284-30-330.

11       6.5      Under Washington law, "[e]very insurer, upon receiving notification of claim,  
12       shall promptly provide necessary claim forms, instructions, and reasonable assistance so that  
13       first party claimants can comply with the policy conditions and the insurer's reasonable  
14       requirements." WAC 284-30-360.

15       6.6      Under Washington law, "[e]very insurer shall complete investigation of a claim  
16       within thirty days after notification of claim, unless such investigation cannot reasonably be  
17       completed within such time." WAC 284-30-370.

18       6.7      Under Washington law, "[w]ithin fifteen working days after receipt by the  
19       insurer of properly executed proofs of loss, the first party claimant shall be advised of the  
20       acceptance or denial of the claim by the insurer." WAC 284-30-370.

21       6.8      The foregoing provisions of the insurance code can be enforced through the  
22       private right of action created by the state legislature in the Washington Consumer Protection  
23       Act: "actions and transactions prohibited or regulated under the laws administered by the  
24       Insurance commissioner shall be subject to the provisions of RCW 19.86.020 and all sections

1 of chapter RCW 19.86 which provide for the implementation and enforcement of RCW  
2 19.86.020." RCW 19.86.170.

3 6.9 USAA's practice of unfairly depriving its injured insureds of their full PIP  
4 medical benefits by denying coverage retroactively and/or by suspending medical payments  
5 until after completion of an "independent" medical exam should be declared an unfair  
6 insurance practice because USAA fails to conduct a reasonable investigation of the claim  
7 before denying payment.

8 6.10 The Washington Insurance Code provides that: "No person engaged in the  
9 business of insurance shall engage in unfair or deceptive acts or practices in the conduct of  
10 such business." RCW 48.30.010(1).

11 6.11 The Washington Insurance Code provides in pertinent part: "No person shall  
12 disseminate any deceptive or misleading representation in the conduct of the business of  
13 insurance or relative to the business of insurance." RCW 48.30.040.

14 6.12 USAA's practice of unfairly depriving its injured insureds of their full PIP  
15 medical benefits by denying coverage retroactively and/or by suspending medical payments  
16 until after completion of an "independent" medical exam should be declared an unfair  
17 insurance practice because it is deceptive and misleading.

18 6.13 Each and every practice identified above should be declared an unfair and/or  
19 deceptive practice under the Insurance Code and the Consumer Protection Act.

20 **COUNT II: VIOLATION OF CONSUMER PROTECTION ACT**

21 6.14 Plaintiffs re-allege each and every allegation as set forth in paragraphs 1.1 to  
22 6.13 above as through set forth here.

23 6.15 The Washington Insurance Code prohibits the use of unfair or deceptive  
24 practices in the business of insurance. RCW 48.30.010(1). A violation of the Insurance Code  
25  
26

1 constitutes a *per se* violation of Washington Consumer Protection Act, RCW 19.86 et. seq.  
2 [“CPA”].

3       6.16 Each and every practice identified in paragraphs 6.8 – 6.13 above is an unfair  
4 and/or deceptive practice that violates the CPA. Each of the practices is a *per se* violation of the  
5 CPA, because each violates the Insurance Code.

6       A.     USAA’s Unfair and Deceptive Practices in Violation of CPA AND IN BAD  
7       FAITH

8       6.17 USAA has engaged in a systematic practice of reviewing medical claims of  
9 covered individuals many months after the individual received treatment and submitted the  
10 bills, and then retroactively denying coverage on the grounds that USAA, with the benefit of  
11 hindsight, believes that the care was not reasonable or necessary. USAA has repeatedly  
12 notified injured parties that coverage for continuing care is denied effective prior to the  
13 notification.

14       6.18 USAA has engaged in a widespread and systematic practice of suspending  
15 benefits until USAA can have its insureds see a biased, but ostensibly “independent,”  
16 medical examiner. That examiner, in turn, will routinely write a report resulting in further  
17 retroactive denial of benefits.

18       6.19 USAA does not provide timely notification to injured insureds that, in USAA’s  
19 opinion, their medical treatment is unnecessary and further claims will be denied. Instead, this  
20 notification routinely comes months after treatment was received. This practice causes accident  
21 victims to continue treating their injuries and incur substantial personal liability, despite their  
22 reasonable reliance that such treatments will be covered by the insurance that they dutifully  
23 paid for.

24       6.20 USAA’s practice also denies insureds and third-party beneficiaries the  
25 opportunity to have their treating physicians or other health care providers dispute USAA’s  
26

CLASS ACTION COMPLAINT - 14

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 "independent" conclusions on a timely basis (i.e., when treatment is actually being given, as  
2 opposed to months later). USAA's retroactive denial of coverage is not actuated by good faith  
3 and equity, as required by the insurance code. Furthermore, USAA's practice of suspending  
4 benefits before properly investigating the merits of the suspension violates USAA's obligation  
5 to adequately and properly investigate an insured's claim..

6       6.21 The abovementioned practices of USAA violate the Washington insurance  
7 code and insurance regulations and the Washington State Consumer Protection Act, and  
8 constitute a breach of: (a) USAA's statutory and contractual obligations of good faith and  
9 fair dealing; (b) USAA's quasi- contractual duties; and (c) USAA's duty to handle claims in  
10 a fair and reasonable manner.

11       6.22 Plaintiff and the class also allege that USAA owed and violated three  
12 fiduciary duties: (1) the duty to disclose all facts that would aid its insureds in protecting  
13 their interests; (2) the duty of equal consideration; and (3) the duty not to mislead its insureds.  
14 USAA's failure to pay medical care already incurred also represents a violation of WAC  
15 284.30.395.

16       6.23 Plaintiff and the Class also suffered an injury to their property and/or business  
17 caused by USAA's unfair and deceptive practices by having to expend out of pocket expenses  
18 in relation to the payment of their medical bills.

19       6.24 USAA routinely and systematically underpaid Plaintiff and the Class and as a  
20 direct and proximate result of USAA's unfair and deceptive practices described above, Plaintiff  
21 and the Class suffered injuries to their property and/or business and damages in amounts to be  
22 proven at the time of trial.

23       6.25 Plaintiff and the Class would have acted differently had USAA not engaged in  
24 the unfair and deceptive acts described above and they would have received additional  
25 necessary medical care and treatment had their coverage not been denied.

26

CLASS ACTION COMPLAINT - 15

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 6.26 Plaintiff and the Class would have acted differently had USAA disclosed all  
2 material facts concerning its duties under the policy and under Washington law.

3 6.27 But for USAA's unfair and deceptive conduct as alleged above, Plaintiff and the  
4 Class would not have suffered injury or damage.

5 6.28 USAA is liable to Plaintiff and the Class for statutory, actual and treble  
6 damages, prejudgment interest, attorneys' fees and costs and injunctive relief under the CPA.

### COUNT III: BREACH OF CONTRACT

8 6.29 Plaintiff and the Class incorporate each and every allegations made in  
9 paragraphs 1.1- 6.28 above as though fully set forth herein.

10        6.30 USAA, by its acts and omissions described in this complaint, breached and  
11 continues to breach its duties of good faith and fair dealing and its "enhanced obligation of  
12 fairness towards its insured," which are all implicit in USAA's insurance contracts. *Safeco*  
13 *Ins. Co. of Amer. v. Butler.*

14        6.31 USAA's specific breaches include, but are not limited to (a) refusing to pay  
15 the amount of medical benefits it is contractually obligated to pay, and (b) failing to meet  
16 its duties of good faith and fair dealing by retroactively denying medical coverage months  
17 after receiving notice of an insured's treatment and/or suspending coverage pending an  
18 examination by one of its "independent" examiners. .

19 6.32 Plaintiff and the proposed class have been damaged by USAA's breaches,  
20 while USAA has unreasonably profited from them.

6.33 Plaintiff and the proposed class are entitled to declaratory and injunctive relief prohibiting USAA from engaging in the breaches alleged in this complaint.

6.34 They are also entitled to damages in an amount to be proven at trial,  
together with prejudgment interest, expenses, and costs.

26

CLASS ACTION COMPLAINT - 16

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-3899 Fax (425) 893-8712  
Rob@kornfeldlaw.com

6.35 Plaintiff and the Class performed all of the terms of the contract, when they submitted their bills for payment to USAA rather than the insured.

3           6.36 USAA breached the contract by not paying the Plaintiff's and Class member's  
4 bill in full but instead reducing the payment based on due to code 41.explanation and/or what it  
5 assumed was the 90<sup>th</sup> percentile of provider charges in the provider's geographic area.

## VII. DAMAGES

7           7.1     Plaintiff and the Class incorporate each and every allegation made in paragraphs  
8     1.1 - 6.67 above as though fully set forth herein.

9           7.2     As a direct and proximate result of USAA's wrongful conduct and breach of  
10 contract, described above, the Plaintiff and the Class sustained injury to their property and  
11 business and damages in amount that will be established at trial, but which amount is  
12 substantially less than \$5,000,000.

13           7.3     The injury and damages include but is not limited to loss of money from under-  
14 payment of their bills, delayed payment of their bills and breach of contract, nominal and  
15 exemplary damages, and out of pocket expenses.

16 7.4 There is no reasonable basis to believe that these damages exceed \$5,000,000.

## VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class respectfully pray that this Court enter judgment on each cause of action alleged herein in favor of Plaintiff and the Class and against all Defendants and that it award damages, equitable and injunctive relief enjoining Defendants from the actions alleged herein and that the Court grant such additional relief as follows:

22 7.1 Certification of this action as a Class Action pursuant to CR 23.  
23 7.2 Award actual damages to be established at trial;  
24 7.3 Award statutory damages;  
25 7.4 Award reasonable attorney's fees and costs as provided by law;

CLASS ACTION COMPLAINT - 17

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

6.37 Enter a Declaratory Judgment that Defendants' acts described above, and as  
1 established at trial, are unfair and deceptive acts that violate the Washington Insurance Code  
2 and Washington Administrative Code, and that Defendants are required to pay all reasonable  
3 and necessary medical expenses of the Plaintiff until such time as there is an independent  
4 determination that they are not reasonable and necessary or the PIP policy limits have been  
5 met..

7           7.5     Enjoin defendants from continued violation of the Washington Consumer  
8     Protection Act, RCW 19.86.010 *et seq.*;

9           7.6     Finding that USAA's actions constitute violation of the Washington Consumer  
10 Protection Act, RCW 19.86.010 *et seq.*

11           7.7      Award Plaintiff and the Class restitution, disgorgement, declaratory relief,  
12 and/or actual damages for USAA's unfair, wrongful and/or deceptive acts and conduct;

## 13 7.8 Award plaintiffs and the Class prejudgment interest;

14           7.9 Award plaintiffs and Class treble, exemplary and/or punitive damages up to the  
15 maximum amount permitted by Washington law;

16 7.10 Award plaintiffs and the Class, expert fees, disbursements and costs of suit;

17 7.11 Award such other relief as the court deems equitable, appropriate or just.

18 Dated: April 11, 2012

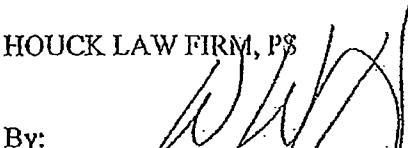
KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK, PLLC

By:

Robert B. Kornfeld, WSBA #10669  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

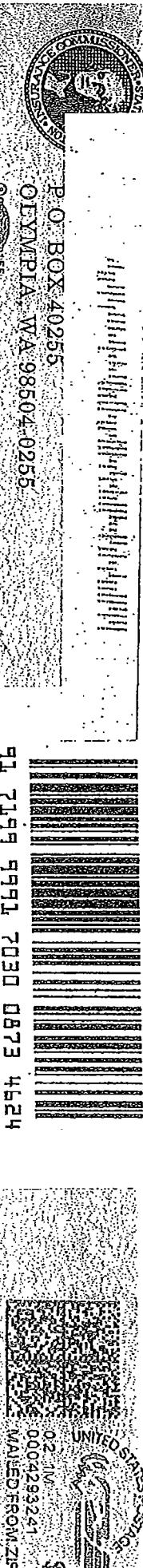
**CLASS ACTION COMPLAINT - 18**

KORNFIELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com

1 HOUCK LAW FIRM, PS  
2  
3 By:   
4 William Houck, WSBA #13324  
5 4045 262<sup>nd</sup> AVE. SE  
6 Issaquah, WA 98029  
7 (425) 392-7118 Fax (425) 337-0916  
8 [houcklaw@gmail.com](mailto:houcklaw@gmail.com)  
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CLASS ACTION COMPLAINT - 19

KORNFELD, TRUDELL, BOWEN &  
LINGENBRINK Robert B. Kornfeld, Inc., P.S.  
3724 Lake Washington Blvd NE  
Kirkland, Washington 98033  
(425) 893-8989 Fax (425) 893-8712  
Rob@kornfeldlaw.com



USA INSURANCE AGENCY INC.  
USA INSURANCE AGENCY INC.  
RICK GREWE  
9800 FREDERICKSBURG RD  
SAN ANTONIO TX 78288

DATAMARK 7  
MAY 02 2012